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Report of the Independent Expert on the situation of human rights in the Sudan

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the independent Expert on the situation of human rights in the Sudan, Aristide Nononsi. The report is submitted pursuant to Human Rights Council resolution 33/26, in which the Council decided to extend for a period of one year the mandate of the Independent Expert, and requested him to report to it at its thirty-sixth session. The report covers the period from October 2016 to June 2017. In it, the Independent Expert assesses the implementation of the previous recommendations, outlines recent developments and the continuing human rights challenges in the country, identifies technical assistance and capacity-building needs and provides a list of recommendations, addressed to the Government and other stakeholders, necessary for addressing the human rights challenges in the country.

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Report of the Independent Expert on the situation of human rights in the Sudan

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I. Introduction

1. In its resolution 33/26, the Human Rights Council extended the mandate of the Independent Expert on the situation of human rights in the Sudan for a period of one year, and requested him to report to it at its thirty-sixth session on the implementation of his mandate, including recommendations on technical assistance and capacity-building.

2. The present report covers the period from 28 September 2016 to 30 June 2017. In compliance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, a draft report was shared with the Government of the Sudan in order to provide it with an opportunity to comment on the observations and findings of the Independent Expert.

3. The report is based on information made available to the Independent Expert during his visit to the Sudan and on information provided by the Government of the Sudan, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and other sources, including civil society organizations, United Nations agencies, funds and programmes working in the Sudan and the donor community.

4. The Independent Expert expresses his gratitude to the Government of the Sudan for its invitation and cooperation, to the Office of the United Nations Resident and Humanitarian Coordinator in Khartoum and to UNAMID for supporting and facilitating his mission to the country. He also thanks the donor community and civil society organizations for their important work in promoting and protecting human rights in the country.

5. He also thanks all other organizations, groups and individuals who provided assistance and shared information with him.

II. Methodology and engagement

6. The Independent Expert undertook two visits to the Sudan during the reporting period, from 10 to 22 February and from 11 to 21 May 2017, and visited Khartoum, Darfur and Blue Nile.

7. In Khartoum, the Independent Expert held wide-ranging discussions with senior government officials, including the Minister for Foreign Affairs, the Minister for Minerals in his capacity as Secretary of the Sudan National Dialogue, the Under-Secretary for the Ministry of Justice, and specialized government units and agencies, the Speaker of the Parliament and the Legislative Committee of the National Assembly. He interacted with the Chief Justice and high-ranking members of the judiciary and had a fruitful exchange with the newly appointed Attorney General. He also had frank and fruitful discussions with the Director of the Legal Department of the National Security Service. He was updated on the situation of human rights in the country by the Rapporteur to and members of the Advisory Council for Human Rights, and was encouraged by their response to some of the issues he raised. He also met with the Chair and members of the National Commission for Human Rights, the Head of the Humanitarian Aid Commission, the Chair and members of the Bar Association, and the Chair and members of the National Press Council. He also met with representatives of civil society organizations, human rights defenders and victims of human rights violations and abuses, some of whom shared their personal experiences with him. He met with members of the diplomatic community, representatives of opposition political parties, staff members and students of the University of Khartoum and of the International University of Africa in Khartoum, from whom he received valuable information on the human rights situation in the country.

8. In Northern Darfur, the Independent Expert met with the Governor of the State of Northern Darfur, members of the judiciary, including the Special Prosecutor for the crimes committed in Darfur, the regional representative of the National Commission for Human Rights, officials of UNAMID and United Nations agencies in Northern Darfur and civil society organizations. He also visited the Sorotoni camp, which hosts internally displaced persons from the Jebel Marra area.

9. In Western Darfur, the Independent Expert held meetings with the Governor of Western Darfur State and his team, and visited the local community in Adi Kong, a city located on border between the Sudan and Chad.

10. In the Blue Nile State, the Independent Expert met with the State Governor and his team, the State representative of the Humanitarian Aid Commission, representatives of United Nations agencies and civil society organizations. He also visited the Azaza internally displaced persons camp.

III. Key recent developments

11. On 10 October 2016, the Sudan National Dialogue adopted an outcome document containing 981 recommendations developed by six committees. It included recommendations for a federal and presidential system of government, a two-chamber parliament — one for deputies and the other for the Council of States — and the separation of the three branches of government. It endorsed principles of democracy and underlined the concept of equal citizenship and the diverse Sudanese identity. On 26 October, the Sudan National Dialogue secretariat presented the document to the National Assembly as the basis for drafting a new permanent constitution within three months. On 5 December, the Higher Coordination Committee of the Sudan National Dialogue was dissolved and a new committee established to follow up on the implementation of the document.

12. Opposition groups, including the Sudan Call coalition, maintained that the Sudan National Dialogue was not an inclusive and consensual process, as agreed upon in the road map agreement, and that the conclusions of the Dialogue could only be used as basis for a new, broader process that it would be ready to join under certain conditions.

13. Following the decision by the Government on 3 November to cut fuel and electricity subsidies in order to prevent inflation, protests erupted in Khartoum, El Fasher, Nyala and several other locations. The authorities arrested 21 members of opposition parties, including the Chair of the National Congress Party, who was accused of inciting the overthrow of the regime. On 25 November, political activists called for mass civil disobedience from 27 to 29 November. Protests, mainly led by students, were reported in Khartoum, Omdurman, El Fasher and several other locations, and arrests by the security services were reported.

14. In line with the recommendations of the Sudan National Dialogue, the National Assembly endorsed amendments to the Constitution on 26 December 2016, which included: (a) the creation of a Government of National Reconciliation with a four-year mandate; (b) a post of Prime Minister within the framework of the presidential system; (c) modifications to the composition of the National Assembly and state legislative councils; and (d) the separation of the posts of Attorney General and Minister of Justice.

15. In January 2017, the Government of the United States of America announced a temporary and partial revocation of bilateral sanctions against the Sudan on the basis of progress made along five tracks, including the cessation of hostilities, improved humanitarian access, an end to negative interference in South Sudan, enhanced cooperation on counter-terrorism and progress made in addressing the threat of the Lord's Resistance Army. The revocation, which was scheduled to be reviewed in July 2017, allowed for the re-establishment of trade relations between the two countries and was expected to gradually provide significant relief for the economy of the Sudan.

16. After two and a half years in exile, Sadiq al-Mahdi, the Sudanese opponent and leader of the Umma Party, returned to the Sudan on 26 January 2017. In a speech after his arrival, he said that he had returned to the country to stop war, achieve peace and establish democracy and the restitution of rights.

17. On 1 March 2017, President Al-Bashir appointed the First Vice-President, Bakri Hasan Saleh, to the post of Prime Minister. He was sworn in the following day, while maintaining his post as First Vice-President. In his new role, Prime Minister Saleh would oversee the implementation of the outcome of the Sudan National Dialogue, including the formation of a Government of National Reconciliation following the dissolution of the current Government on 2 March 2017. A new Government was appointed on 11 May 2017.

18. On 8 March 2017, the President decided to pardon 259 armed movement personnel who had been captured fighting government forces. That number included 66 fighters who had been sentenced to death. This was a welcome development that the Independent Expert hopes will go a long way towards fostering confidence and trust among the parties. In addition, on 11 May 2017, two pastors who had been sentenced to 12 years' imprisonment were released from custody after a presidential pardon. The Independent Expert was also informed of the appointment on 16 May 2017 of the Chair of the National Commission for Human Rights.

IV. Main human rights challenges

19. The Independent Expert would like to commend the Government for taking some concrete steps in certain areas towards the implementation of his previous recommendations. In particular, he welcomes the separation of the Minister of Justice from the Office of the Attorney General, and the efforts undertaken in order to facilitate humanitarian access to conflict-affected areas in Darfur, Southern Kordofan and Blue Nile.

20. In spite of those positive steps, the Independent Expert remains concerned about a number of human rights issues in the country that are still largely unaddressed.

A. Harassment of human rights defenders and curtailment of civil society actors

21. The Independent Expert received reports of incidents of harassment, arrests and prolonged detention of representatives of civil society organizations, without access to legal representation or to their families.

22. In that regard, serious concerns were raised in relation to the case of Hafiz Idris and Mudawi Ibrahim Adam, among others. Mr. Hafiz, an internally displaced person activist from Northern Darfur, was arrested in Darfur by national security officers on 24 November 2016 and forcibly transferred to Khartoum. On 8 December 2016, Mr. Mudawi, a human rights defender, founder and Chair of the Sudan Social Development Organization, was arrested by national security officers along with his driver. A few days later, Nora Abaid, an accountant from Mr. Mudawi's engineering company, was also arrested by national security officers. Another individual, a human rights defender, was arrested for having tried to reach Mr. Mudawi on his mobile telephone as he was not aware of his arrest. All of those persons were detained at the National Security Service premises in Khartoum.

23. While the driver, the accountant and the other human rights defender were released in March 2017, Mr. Mudawi and Mr. Hafiz are still held in custody to date. Their case was transferred to the Office of the Public Prosecutor on 21 and 22 February respectively. The Public Prosecutor charged them with espionage and undermining the constitutional order, and they are currently facing trial. According to Sudanese law, the accusations against Mr. Mudawi and Mr. Hafiz could result in the imposition of the death penalty should there be a guilty verdict. The Independent Expert reiterates his call on Sudanese authorities to release Mr. Hafiz and Mr. Mudawi, as he believes that they are being held solely for their legitimate work on protecting and promoting human rights in the Sudan.

24. Tasneem Taha, a Sudanese lawyer and human rights defender, was arrested in Darfur at the end of 2016 and forcibly transferred to Khartoum, where she was detained by the National Security Service. She was released in March 2017 and has since left the country.

25. The Independent Expert notes with concern that the state of emergency in Darfur continues to curtail fundamental rights and freedoms. Arbitrary arrests and prolonged detentions without judicial oversight are being carried out by the security apparatus, invoking emergency and/or national security legislation. He calls on the Government of the Sudan to repeal emergency laws in Darfur.

B. Continued detention of a UNAMID staff member

26. The Independent Expert was informed about the case of Adam Abdulbari, a language assistant at UNAMID, who was arrested in Darfur by the national security officers on 23 November 2016 and transferred immediately to the National Security Service headquarters in Khartoum, where he was held in custody. In March 2017, Mr. Abdulbari was transferred to the Alnuza police station, where he remains detained under the supervision of the Attorney General for Crimes against the State. The UNAMID staff member is accused of undermining the constitutional system, waging war against the State, espionage against the country and terrorism.

27. The Independent Expert is concerned by the non-compliance by the Government of the Sudan with the provisions of the status-of-forces agreement between the United Nations and host countries. He calls on the Sudanese authorities to release Mr. Abdulbari as it appears that he is being detained for his work with UNAMID.

C. Excessive use of force against Darfuri students in Khartoum and El Gezira States

28. The Independent Expert was made aware of incidents of attacks and arrests targeting Darfuri students in Khartoum and El Gezira States. According to information received, on 27 January 2017, officers of the National Security Service raided a student dormitory in Um Badda district in Omdurman housing mainly Darfuri students. Five of them were reportedly arrested for unknown reasons. On 21 March 2017, officers arrested 13 Darfuri students from the University of Holy Qur'an and Islamic Sciences in El Gezira State and used tear gas and batons to disperse a peaceful demonstration organized by them to protest against the university administration's refusal to honour an agreement exempting the Darfuri students from paying tuition fees. The following day, officers raided the Darfuri students' residence and arrested six of them. On 15 May 2017, officers and pro-government students attacked an assembly organized by the Darfuri student union alliance at Al-Azahri University, preventing the delivery of a speech calling for the full implementation of a fee-exemption policy for Darfuri students agreed to by the Government of the Sudan during the peace talks in 2006 and 2011. Twenty students were arrested and taken to the central police station in Khartoum Bahri, where a case was filed against them for breach of public peace and public. The case was referred to the Central Bahri Public Order Court on 16 May and dismissed owing to lack of evidence.

29. The independent Expert expresses concern about the excessive use of force by the Sudanese authorities as a means to restrict the rights to freedom of expression, association and assembly, which are guaranteed by the Constitution of the Sudan and international human rights treaties to which the Sudan is a party.

D. Restrictions on freedom of religion

30. Another area of concern that the Independent Expert discussed with the relevant stakeholders includes the need to ensure the protection of the freedom of religion, with particular reference to the demolition of churches and places of worship by the national security forces. On 7 May 2017, the Sudanese authorities destroyed the Sudanese Church of Christ building in the Soba al-Aradi area of Khartoum. On 17 May 2017, the Sudanese Church of Christ building in Agadisia in Khartoum was also demolished. While the Government alleged that the demolition fell under the authority of planning authorities and also included also mosques, schools and homes that had been randomly and disorderly constructed, the Independent Expert has yet to receive a list of mosques, homes and schools that were demolished in those areas.

31. The National Security Service has also been used to intimidate and arrest or detain Christian religious leaders. The Independent Expert had raised the issue in his discussions with government officials as a legitimate concern, which the Government of the Sudan needs to pay attention to, in view of the importance of the freedom of religion in a

democratic society. In that regard, the Independent Expert welcomes a presidential pardon that gave way to the release on 11 May 2017 of two pastors who had been sentenced to 12 years' imprisonment.

E. Press censorship

32. The Independent Expert would like to express concern about ongoing censorship of newspapers and increased restrictions on journalists from expressing freely their opinion. Pre-publication censorship continues to be used against newspapers and some journalists were ordered to cease their newspaper columns. The National Security Service continues to intimidate and instil fear of arrest in journalists, which impedes press freedom, freedom of opinion and freedom of expression. In addition, post-publication censorship continued unabated and government security agents seized printed newspapers for allegedly crossing publication "red lines" set by the National Security Service. Between October and June 2017, printed editions of different newspapers, such as Al-Tayar, Al-Jareeda Al-Watan, Al-Youm Al-Tali, Al-Ayam and Akhir Lahza, were confiscated by government security agents without them stating specific reasons. Moreover, the decision by the National Security Service to ban an Al-Jareeda columnist from writing contravened the Interim National Constitution and the International Covenant on Civil and Political Rights, to which the Sudan is a party.

33. The Independent Expert raised the issue in his discussions with government officials as a legitimate concern to which the Government needed to pay attention, in view of the importance of freedom of expression and of the press in the promotion and protection of human rights in a democratic society. The Government was encouraged to amend the Press and Publication Act in order to provide more protection to journalists and newspapers publishers.

F. Human rights violations committed during the demonstrations of September 2013

34. In May 2017, the Government of the Sudan submitted to the Independent Expert a report on the status of implementation of the recommendations made by him to the Government in his previous reports.[1] While the Independent Expert appreciates that initiative, he notes with concern that the report of the Government did not include information on the issue of the victims and families of victims of the oil demonstrations of September 2013.

35. The Independent Expert would welcome updates from the Government on the compensation process for the victims and families of victims of the September 2013 incidents. In addition, he reiterates his call on the Government to ensure that an independent judicial inquiry is conducted into the killings and various other human rights violations committed during those incidents, and to bring those responsible to justice.

G. Human rights situation in conflict-affected areas

36. The Independent Expert would like to commend at the outset the decision by the Government of the Sudan to extend the ceasefire in the conflict-affected regions of Darfur and in the two areas of Southern Kordofan and Blue Nile, which is generally holding. He is also encouraged by the decision by the Government to resume peace talks with the different armed opposition groups for a lasting peace in the country.

37. Despite the decline in military operations in those regions, the overall security situation remains volatile and unpredictable.

[1] A/HRC/30/60 and A/HRC/33/65.

I. Darfur

38. The hostilities between the Government of the Sudan and rebel forces have decreased significantly as a result of the three-phased Operations Decisive Summer (from January 2014 to June 2016), which effectively reduced the presence of the armed groups to parts of western Jebel Marra, and the subsequent ceasefire, which has been in place since June 2016.

39. Nonetheless, during his visit to Darfur, the Independent Expert received reports of incidents of banditry, armed robbery, assault, killing, rape, abduction of locals and internally displaced persons, intercommunal clashes over farmland and sexual and gender-based violence, which remain major concerns and continue to have an impact on the peace, safety, security and coexistence of local communities. The frequency and scale of killings in the context of intercommunal violence shows that it has become a major feature of the conflict in Darfur.

40. The Independent Expert was informed of efforts undertaken by the authorities to prevent and respond to such incidents through security measures, engagement with stakeholders and the facilitation of reconciliation processes in some areas of the Darfur region. Nonetheless, the underlying causes of such conflicts related to access to land, water and other resources have not been addressed, and the situation has been exacerbated by a situation of general impunity, a weak rule of law and weak justice institutions.

41. In his discussions with the Chief Justice and the Special Prosecutor for the crimes committed in Darfur, the Independent Expert noted their agreement on the need for serious commitment to combat impunity effectively. He was briefed about a number of steps taken by the authorities in that regard, in particular in the Darfur region, where the authorities deployed additional public prosecutors, judges and police officers as part of the efforts to improve access to justice. However, the Special Prosecutor is facing many challenges, including the volatile security situation in the Darfur region and broad impunity provisions under Sudanese laws that create obstacles to the successful prosecution of members of the Sudan Armed Forces and those of the national security agencies.

42. The Independent Expert is also concerned about the human rights situation of civilians, and particularly vulnerable groups such as internally displaces persons, which remains problematic in the light of their exposure to attacks and difficult social and economic conditions. The initial pattern of violations documented by UNAMID in 2017 showed an increase in comparison to the same period of 2016; in the first six months of the year, UNAMID documented 267 cases of human rights violations and abuses involving 521 victims, including 37 children. In total, 209 cases of human rights violations and abuses involving 357 victims were confirmed, while the remaining 58 cases involving 164 victims could not be verified owing to various factors, including access restrictions.

43. The Independent Expert visited Sorotony, where he met with representatives from the local internally displaced persons' camp, who informed him about the state of insecurity in which they live, mainly owing to the presence of various armed elements and criminality within and outside the camp. Sexual and gender-based violence also remained a serious concern in the camp. According to information received by the Independent Expert, the incidents had been perpetrated by armed individuals when the women were outside the camp engaged in livelihood activities, or inside the camp at night. In that regard, the Independent Expert was informed about nine cases of rape reportedly committed in the Sorotony camp between 27 January and 18 February 2017. Many incidents of sexual violence were not reported owing to fear of social stigma associated with rape, fear of reprisal and the absence of law enforcement institutions in Sorotony to investigate and prosecute perpetrators effectively.

44. The Independent Expert urges the Government, which bears the primary responsibility to protect civilians within its territory, to conduct investigations promptly and bring perpetrators to justice. He also urges the Government to abide by the call by the Security Council for enhanced cooperation with UNAMID in its efforts to protect civilians in Darfur.

45. In Adi Kong, in the Western Darfur State, the Independent Expert met with members of the local community, who remained anxious about the security situation in the area. They expressed the need for enhanced protection of the civilians by the authorities and the provision of basic services, including access to water, education and health care. It is essential for the Government, with the support of its international partners, to protect the rights of civilians effectively and in a sustainable manner.

46. The Independent Expert has on previous occasions raised concerns about the non-issuance of working visas for UNAMID human rights personnel, which undermines the ability of the Mission to implement its human rights mandate. Since December 2014, only one visa had been granted to a newly recruited human rights officer and 15 visas were pending. During the reporting period, visas for serving international human rights officers that had been pending renewal were only renewed for six months.

47. The Independent Expert reiterates his appeals to the Sudanese authorities to take the corrective measures necessary with a view to ensuring the continuity of the human rights mandate in Darfur. Neither the Mission's mandate nor its role in the Darfur peace process can be achieved without greater focus and mainstreaming of human rights; human rights are central to peace processes, as evidenced in the Doha Document for Peace in Darfur, particularly those sections on human rights and fundamental freedoms, justice and reconciliation.

2. Blue Nile and Southern Kordofan

48. The Independent Expert visited Damazine, Blue Nile State, where he met with the State authorities, community leaders, representatives of United Nations agencies and civil society actors, who shared with him updated information in relation to the security, humanitarian and human rights situation. They expressed the need for technical assistance in the field of human rights. The Independent Expert encourages the Government of the Sudan and the international community to provide adequate means and resources to those community leaders and civil society actors, in order to strengthen their capacity to protect and promote human rights.

49. During his presence in Damazine, the Independent Expert had the opportunity to visit the Azaza camp, which is reportedly hosting more than 4,000 internally displaced persons, whose precarious conditions he was concerned by, and who expressed their willingness to return to their homeland if there was an improvement in the security situation. The Independent Expert calls on the Government of the Sudan and the international community to increase their assistance to internally displaced persons, and to work towards creating the conditions necessary for their return to their homeland. Furthermore, he strongly urges all parties to the conflict to respect international human rights and international humanitarian law and to facilitate access to the conflict affected areas for delivery of humanitarian assistance.

50. The Independent Expert was informed that State authorities and community leaders had established mechanisms and processes to facilitate reconciliation in the region. He welcomes the initiatives and would encourage the Sudanese authorities to work towards addressing the root causes of the conflict for a lasting peace in the region.

51. The Independent Expert continued to receive reports indicating that government forces and the Sudan People Liberation Movement-North had engaged in sporadic military attacks in Southern Kordofan State, despite the declared cessation of hostilities. In that regard, he received information about the attack that had taken place on 12 February 2017 in El Mashayesh, 35 kilometres west of Kadugli, an area reportedly heavily inhabited by the civilian population. The Independent Expert reiterates his call on both parties to the conflict to respect the ceasefire and to refrain from violating human and humanitarian principles in their conduct of hostilities.

52. On a positive note, the United Nations entities and other partners reported some improvement in terms of access to areas previously inaccessible to carry out needs assessments and provide humanitarian assistance to civilians in need. In that context, since the beginning of 2017, humanitarian missions had been allowed to visit several locations in

the conflict-affected areas, including the Jebel Marra area in Darfur, where they had not been given access in the previous five years.

H. Situation of South Sudanese refugees in the Sudan

53. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), more than 417,000 South Sudanese refugees had arrived in the Sudan since the conflict broke out in December 2013. Of those, more than 28,000 had arrived in the first two weeks of May 2017. In 2017, almost 137,000 refugees had arrived from South Sudan, which was more that the total number of arrivals during 2016, according to UNHCR.

54. During the first half of May 2017, almost 20,000 South Sudanese refugees had sought shelter and assistance in the Sudan as a result of the hostilities in Kodok in the Upper Nile State of South Sudan, according to United Nations humanitarian agencies, including the United Nations Development Programme, the United Nations Population Fund, the Office for the Coordination of Humanitarian Affairs, UNHCR, the Word Health Organization, the World Food Programme and the United Nations Children's Fund. In September 2016, the Government of the Sudan recognized South Sudanese as refugees following the signing of a memorandum of understanding with UNHCR. The Independent Expert is of the view that this was a step forward that will provide opportunities to enhance solutions for refugees and provide much-needed support to refugee-hosting communities.

55. However, the Independent Expert is concerned about the absence of adequate assistance and the continuing influx, which may cause the South Sudanese refugees to decide to seek refuge in other countries with a view to improving their situation or may put them at risk of being targeted by traffickers. The Independent Expert calls on the Government of the Sudan and the humanitarian community to increase their assistance to the South Sudanese refugees in the Sudan.

I. Illegal migration and human trafficking

56. The Independent Expert held meetings with the International Organization for Migration and the Government of the Sudan in relation to migration and human trafficking in the country. Information gathered showed that the Sudan was a country of origin, transit and destination for irregular migrants owing to its geographical location in Africa. In addition, it was a hub for the north-eastern route for nearly all Eritreans, Ethiopians and Somali migrants who intended to cross to Europe. Those migrants were often subjected to severe exploitation and abuses. Refugees, asylum seekers and other migrants residing or transiting through the Sudan included Chadians, Ugandans and Nigerians.

57. The Government informed the Independent Expert that migrants, unaccompanied minors, refugees and asylum seekers, primarily from Eastern and Western Africa, were highly vulnerable to trafficking and forced labour. In addition, human trafficking and smuggling had a regional dimension reaching far beyond the Sudan, which served as transit point in the eastern Africa migratory route into Northern Africa and towards Europe.

58. The Government adopted an Anti-trafficking Act in 2014 with a view to addressing that phenomenon. Nonetheless, the Independent Expert notes that gaps remain in the government policy to combat illegal migration. For instance, the Anti-trafficking Act criminalized the seduction, transportation, kidnapping, reception, holding or grooming of people with the intention of exploiting them or using them in illegal acts. However, it failed to define what constitutes exploitation, which in international law includes forced labour and forced prostitutions of others. In addition, the government anti-trafficking unit lacked resources and its investigative capacity remained insufficient.

59. The Independent Expert calls on the international community to provide the Government with the technical cooperation necessary with a view to enhancing its anti-trafficking services and recommends a regional approach in order to address the phenomenon.

J. Economic, social and cultural rights

60. On 3 November 2016, the Government of the Sudan announced cuts to subsidies for fuel and basic commodities and an increase in electricity prices as part of its economic reform programme. According to the Government, the measures were meant to curb inflation and control the collapse of the Sudanese pound by reducing government expenditures and saving hard currency reserves. Since then, fuel prices have increased by nearly 30 per cent. In addition, the price of electricity increased by 50 per cent. Medicines also became expensive for people in the Sudan, according to the Pharmacies Department Consumer Protection Association.

61. The Independent Expert notes that the decision by the Government to cut subsidies affected the poorest people in the Sudan. In addition, in the distribution of the national budget, it is noteworthy that the combined education and health allocation represented about 3 per cent of spending for the defence and security sectors.

62. The Independent Expert calls upon the Government to ensure that the State budget is distributed adequately among key sectors, such as education, health and social services.

V. Technical assistance and capacity-building

63. The current situation in the Sudan, characterized by a decline in military operations between the Government and the opposition armed movements, has created a space in which the international community can assist in the protection and promotion of human rights. From the Independent Expert's perspective, there is a need for the international community to increase its technical assistance to national institutions, both governmental and non-governmental, in the field of human rights. In particular, the Independent Expert is of the view that the Sudan needs assistance for the establishment of an appropriate legal framework, institutional arrangements and democratic reforms, which are key steps to be undertaken by the Government of the Sudan to ensure the effective protection and promotion of human rights in the country.

A. Reform of the national legal framework

64. The 21 articles of the Interim National Constitution bill of rights cover most of the fundamental rights and freedoms, and civil and political liberties, including: the right to personal liberty (article 29); the right to equality before the law (article 31); the right to a fair trial (article 34); the right to litigation (article 35); the right to freedom of expression and media (article 39); the right to freedom of assembly and association (article 40); the right to vote (article 41); the right to freedom of movement and residence (article 42); and the rights of persons with special needs and the elderly (article 45).

65. An appropriate legal framework consistent with the Interim National Constitution and international norms and standards is critical for the promotion and protection of human rights in the Sudan. One of the critical challenges facing the Sudan was the failure of the legislature, especially at the national level, to apply at the national level key international human rights instruments that the Sudan has ratified. The Sudan has ratified 5 of the 10 core treaties, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, including its Optional Protocol on the involvement of children in armed conflict and its Optional Protocol on the sale of children, child prostitution and child pornography. The Sudan has yet to ratify other key universal human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and the Convention on the Elimination of Discrimination against Women.

66. The Independent Expert emphasizes that the Government, in ratifying a treaty, agrees to guarantee the rights enshrined therein by making them part of its domestic laws. That harmonization aims at filling the gaps between the national legal system and

international treaties. In 2015, the Ministry of Justice issued a decree, pursuant to Council of Ministers Decree No. 140 on the national reform programme, by which it established a committee to review a number of pieces of legislations, in particular the Criminal Act 1991. The committee, which is composed of former judges, human rights specialists and academics, is tasked to make the necessary amendments to the legislation in order to comply with international standards.

67. To date, the Independent Expert notes with concern that progress in harmonizing national laws with international human rights instruments ratified by the Sudan has moved at a slow pace. In that regard, the National Security Act 2010, the Criminal Act and Criminal Procedure Act 1991, the Press and Printed Materials Act 2009, the Voluntary and Humanitarian Works Act 2006, the 1997 Emergency and Public Security Act and the Public Order Regime, among others, should be amended and/or repealed in order for the Sudan to comply with its international obligations.

68. During the Independent Expert's meeting with the Legislative Committee of the Parliament, he received assurances that the process for the amendment of the National Security Act 2010 and the Criminal Act and Criminal Procedure Act 1991 would be completed with a view to ensuring their compliance with international standards. In particular, the Independent Expert is of the view that bringing the powers of the National Security Service in line with international standards — the National Security Service being a governmental body operating as an intelligence agency focused on information gathering, analysis and advice to the Government — would help to improve the human rights environment in the Sudan.

69. The Independent Expert calls on the international community to provide technical assistance to the Government and National Assembly of the Sudan to ensure that the legislation reform process is conducted in a coherent and efficient manner.

B. Institutional arrangements and democratic reforms

1. Rule of law and administration of justice

70. A transparent legal system that is accessible to all is fundamental to a constitutional democracy. The fair, independent, impartial and transparent administration of justice is a critical component of a society that is based on the rule of law. The rule of law requires that all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and that are consistent with international human rights norms and standards.

71. Article 124 of the Sudan Interim National Constitution sets forth the basic structure of the Sudan judicial system. It states that "[t]he National Judiciary shall be structured as follows: (a) the National Supreme Court; (b) National Courts of Appeal; (c) other national courts, which includes the regular courts, both criminal and civil,[2] special courts, military courts and rural courts in rural areas that apply customary law to resolve disputes". In addition, in chapter 3, article 6, of the Emergency and Public Safety Act (1997) and article 10/E of the Judiciary Act (1986) empower the Chief Justice to establish special criminal courts and corresponding appeal courts. Those special courts have jurisdiction "over crimes of particular interest to the State, including offences against the State (such as espionage), robbery, banditry, killing, unlicensed possession of firearms and anything else considered as a crime by the head of the judiciary in consultation with the governor of the concerned state".

72. The Independent Expert notes that there is no clear delineation of the functions of the specialized courts established under the Emergency Law of 1997 and the new Special Criminal Court for Serious Crimes, which exist concurrently. Both have jurisdiction over the same crimes and it is unclear which cases are assigned to which court.

[2] There are three levels of district courts and their jurisdiction is defined in the 1991 Criminal Procedure Act.

73. In order to provide meaningful and lasting support in the area of administration of justice, it is important for the international community to consider the rule of law sector in the Sudan in a holistic manner and examine the linkages between the different phases of the justice process (i.e., arrest, start of a judicial procedure, pretrial detention, trial, appeal and imprisonment) and how the different rule-of-law actors function and coordinate with each other (e.g., police, prosecutors, lawyers, judges, court administrators and prison officials).

74. An independent judiciary is essential not only for the adjudication of criminal and civil cases, but also for ensuring that those who hold power may be held accountable in the event of abuse or violations. Judges should be free from coercion, pressure or influence from the executive or other actors in order to render impartial and fair decisions. In that regard, the Independent Expert notes that broad impunity provisions under Sudanese law create obstacles to prosecuting successfully certain categories of Sudanese authorities, including members of the Sudanese Armed Forces and the National Security Service who are responsible for violations of human rights or international humanitarian law.

75. In a report on the status of implementation of the Independent Expert's recommendations, submitted to the Independent Expert during his mission to the Sudan in May 2017, the Government stated that 76 national security officers and staff had been divested of immunity, prosecuted and sent to trial in 2016 for various criminal offences. Moreover, the Government added that, from 1 January 2016 to 31 March 2017, 46 police officers and Sudanese armed forces personnel had been disciplined and prosecuted for various crimes, including murder and injuries. The Independent Expert welcomed that information and would like to discuss the cases with the relevant Sudanese authorities during his next visit to the country.

76. The Independent Expert would also like to highlight that the role of the courts in the process of harmonization of Sudanese legislation is essential. On the one hand, the courts can interpret national laws in the light of international instruments and ensure the compatibility of both. On the other hand, when necessary, the courts can determine when there is a clear incompatibility between national laws and international standards and issue a declaration of incompatibility.

77. During his meeting with the Chief Justice, high-ranking members of the judiciary and the newly appointed Attorney General, the Independent Expert received requests for technical assistance to those institutions. He was also made aware of the ongoing projects in the Sudan to strengthen the rule-of-law and justice sectors. He appeals to the good offices of donors to increase their funding to the rule-of-law institutions in the Sudan, including by providing sufficient funding for the Joint Rule of Law and Human Rights Programme in Darfur.

2. Support to the National Commission for Human Rights

78. The Independent Expert is of the view that national efforts for the protection and promotion of human rights need to be genuine and credible. In that regard, the establishment of a national human rights commission was seen as a step forwards in the commitment by the Sudanese authorities to enhance the national system for the protection and promotion of human rights in the country.

79. In 2009, the National Assembly passed the National Human Rights Commission Act, and repealed the previous 2004 law. The National Commission for Human Rights began to operate pursuant to a presidential decree in 2012. The Act provides for a relatively broad mandate, and its functions apply across a wide range of human rights activities.

80. Lack of human resources is the most significant capacity issue currently facing the Commission. For several years, the Commission had been led by a Chair ad interim, and the mandates of most of the Commissioners have come to an end. The Independent Expert was informed of the appointment on 16 May 2017 of the Chair of the Commission. He would like to reiterate the important role that can be played by an independent national human rights institution. He encourages the Sudanese authorities to fill the remaining vacant positions for the Commissioners in a transparent and representative manner, and to support the national human rights institution with the funding necessary to enable it to function effectively.

81. Moreover, the Independent Expert would like to emphasize the need for the national human rights institution to comply with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in order to play a crucial role in monitoring and promoting the effective implementation of international human rights standards at the national level. In that regard, he would recommend that amendments be made to section 6 of the Act relating to the appointment of the Commissioners, to ensure that appointments are made by the National Assembly following a transparent and competitive process, as provided for under the Paris Principles.

82. The Independent Expert reiterates his call to the international community to enhance its technical and financial assistance to the Commission in order to allow it implement its mandate in an efficient manner.

VI. Conclusion and recommendations

83. The Independent Expert acknowledges that, during the period under review, there were some positive steps undertaken by the Government of the Sudan in the field of human rights. They include the separation of the Ministry of Justice from the Office of the Attorney General, the decision by the President of the Sudan to pardon 259 armed movement personnel who had been captured during fighting with government forces in Darfur, the release from custody of two pastors who had been sentenced to 12 years' imprisonment following a presidential pardon, and the efforts undertaken in order to facilitate humanitarian access to conflict-affected areas in Darfur, South Kordofan and Blue Nile.

84. Despite those positive developments, the Independent Expert remains concerned about a number of human rights issues in the country that are still largely unaddressed. The violations of civil and political rights after the holding of the Sudan National Dialogue are of great concern. The Independent Expert is particularly concerned by incidents of harassment, arrests, torture and prolonged detention of civil society actors, without access to legal representation or their families, by officers of the National Security Services. Also of concern are the ongoing censorship of newspapers and increased restrictions on journalists from expressing their opinions freely. Such actions amount to violations of the rights to freedom of expression and of association, and suggest a preoccupying trend, while the aim of Sudan National Dialogue had been, inter alia, to guarantee fundamental freedoms, rights and social justice and to agree on independent mechanisms for the protection of such rights.

85. In Darfur, Southern Kordofan and Blue Nile, despite a decline in military operations between government forces and armed opposition movements, the prevalence of armed groups, including government-backed militias and other armed actors, who operate in total impunity, continue to pose a serious threat for the protection of civilians and human rights. The Government of the Sudan has primary responsibility to ensure the protection of its civilians, and it needs to undertake effective measures to address the serious institutional gaps in the justice and security sectors in a coordinated manner in order to promote respect for the rule of law and protection of human rights.

86. In the light of the foregoing observations, the Independent Expert makes the recommendations below.

A. Government of the Sudan

87. The Independent Expert calls upon the Government of the Sudan to:

(a) Take concrete measures to reform the current legal framework, which infringes on the exercise of political and civil rights and fundamental freedoms. Priority should be given to withdrawing enforcement powers, including arrest and detention, from officers of the National Security Service, in line with the information-

gathering and advisory role envisioned by the Sudan National Dialogue, and to ensuring its compliance with international standards;

(b) Ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and perpetrators are brought to justice promptly, in particular those with command responsibility;

(c) Ensure that human rights defenders, humanitarian workers, members of political opposition, journalists, students and other civil society actors are not intimidated, arrested and detained arbitrarily, ill-treated or tortured by State agents on account of their work or opinions, and proceed to the release of those who are currently detained;

(d) Undertake a transparent and inclusive process for the selection of Commissioners of the National Commission for Human Rights and provide the Commission with adequate resources and staff;

(e) Ensure that the State budget is distributed adequately among key sectors, such as education, health, social services, law enforcement and rule of law institutions and national human rights institutions;

(f) Take the corrective measures necessary, including by granting working visas to human rights personnel of UNAMID, in line with the relevant status-of-forces agreement, provide United Nations human rights monitors with full and unimpeded access to sites of human rights violations and not obstruct their freedom of movement to discharge their mandate;

(g) Facilitate the deployment to the Sudan of an OHCHR technical assessment mission in order to discuss potential areas for possible technical cooperation with the relevant Sudanese authorities and other stakeholders, including United Nations entities, civil society organizations and the diplomatic community.

B. International community

88. The Independent Expert calls upon the international community to:

(a) Continue to provide technical and financial assistance to the Government of the Sudan, on the basis of needs assessment, to strengthen national institutions for the protection of human rights, including the Advisory Council for Human Rights, the National Commission for Human Rights, the judiciary, the police, the Unit on Combating Violence against Women, the National Council for Child Welfare, the Human Rights Committee and the Legislative Committee of the National Assembly;

(b) Provide civil society organizations with technical assistance and capacity-building programmes to improve their human rights advocacy and rule-of-law capabilities and to enable them to contribute more effectively to the improvement of human rights in the Sudan;

(c) Engage the academic community in the Sudan to contribute to the strategy to improve the human rights situation in the Sudan and provide it with technical assistance and capacity-building to enhance its capabilities for that purpose.

C. UNAMID

89. The independent Expert calls upon UNAMID:

(a) In accordance with its mandate, and without prejudice to the primary responsibility of the Sudanese authorities, to take the measures necessary to protect civilians, proactively deter attacks on civilians and prevent violations of international human rights law;

(b) To continue to provide support and technical assistance to the Government of the Sudan and civil society organizations, in particular to provide human rights training and support to judicial institutions and non-governmental institutions across the Sudan.

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Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi.

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Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State*

A. General observations

1. The Government of the Sudan welcomes this opportunity to respond to the draft report of the Independent Expert on the Situation of Human Rights in the Sudan, and extends its gratitude to him for sharing the draft report to comment on the his observations and finding.

2. While appreciating the efforts and engagement of the Independent Expert with the Government, Sudan makes the following observations on his draft report.

3. Concerning the essence of the mandate of the Independent Expert, which is understood to focus on the provision of technical assistance and capacity building to improve human rights in Sudan situation within the ambit of HRC Agenda Item 10, the Government observes that the current IE's report, as do the previous reports, includes no more than the call to the international community to provide such technical assistance to the Sudan in two or three paragraphs in each report. The Government expected that the Independent Expert should have made, through his successive mandates, a definite perception on any proposal on how such assistance be provided, or on the domains and priorities related thereto., despite the fact that all the entities he met during his visits to the country informed him of their needs and priorities concerning technical assistance and capacity building. Further, the Government handed to him a document of detailed programs and projects prioritized as needed for further improving human rights situation in the country. The IE's reporting methodology appears to be a mandate under Agenda Item 4, rather than under Item 10.

4. The Government also notes that many areas indicating significant improvement of human rights situation in the Sudan, and some challenges that could have been addressed, have been bypassed or ignored by the report, despite the fact that the Independent Expert has been well informed of and got in touch with. These include, inter alia, the following:

- Though the report mentioned the partial lifting of US sanctions on Sudan, it is silent of the persistent enormous negative impacts of such sanctions on the enjoyment of human rights by the Sudanese people.
- The report does not devote an adequate space to the outcome of the national dialogue and its positive impact on the political and social fields, reduction of the state of blockage and improvement of security situation throughout the country.
- The report overlooked the reflection in his report of some venues visited by the Independent Expert such as Khartoum Social City established by the Government by its own national resource, and serves as shelter for homeless and street girls and boys and vocational training center, with health, psychological and training services for children.
- The meeting with the newly established Committee of the National Human Rights Report was also neglected in the IE draft report. This is an inter-ministerial body with representatives from the parliament, judiciary, academic institutions and civil society organizations, tasked with the enhancement and sensitization of human rights mainstreaming within the State apparatus, and to report annually on human

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rights situation in the country to the Council of Ministers and the Legislature to enable them to take the suitable decisions towards further protection and promotion of human rights.

- The challenge and negative effects of foreign debt patrimony on the enjoyment of human rights, including the right to development, of which the Independent Expert had minutely been informed during his February visit, have not found the chance in the draft report. Although the Sudan has fulfilled the conditions and criteria and become qualified to exemption or relief in accordance with the HIPC initiative, Sudan still suffering under the heavy burden of such debts.

- Although the draft report devoted a space to speak about Southern Sudan refugees, it omitted the issue of refugees from other countries. Sudan hosts more than 2 million refugees of different nationalities. Many were hosted in camps, others, particularly in East Sudan, were integrated in the local community. Sudan allocated 270, 000 hectare of agricultural land to assist the refugees in their livelihood and self-reliance, in addition to small business, livestock and revolving fund.

- The IE report skipped the recommendations to the armed groups, as used to do in the previous reports. In the present report the armed groups were substituted for UNAMID. Although the mandate of UNAMID is confined to the 5 states of Darfur and to the provisions of the relevant UNSC resolutions, the recommendation in paragraph 88 (a) of the report called on UNAMID to provide human rights training and support to judicial and non-governmental institutions **across** the Sudan.

- Though the draft report mentioned the 2016 amendments to the Interim Constitution, it didn't refer to the amendments of April of 2017. Such amendments, which were introduced to further enhance human rights and freedoms, involved article 15 (1) of the Interim Constitution; marriage and family welfare; article 28 the right to life; article 29 the right of freedom; article 30 prohibition of slavery and forced labor; article 31 equality before the law and eligibility to public posts; article 37 sanctity of privacy; article 38 freedom of conscience, worship and ideology; article 39 freedom of speech and information and article 40 freedom of alliance, assembly and association.

- The 2017 amendments also covered constitutional provisions of article 151 of the Interim Constitution pertaining to NISS. Paragraph (2) of the new article provides that: "*The National Security Service shall be professional and its mandate shall focus on information gathering, analysis and advice to the appropriate authorities*". Paragraph (4) of the same article provides that NISS shall make reports and present oral statements before the National Assembly, and Paragraph (7) provides that NISS's courts and accountability of its members shall be regulated by law.

B. Comments on the draft report by paragraphs

Paragraph 12

5. The assumption by some political opponents that the national dialogue was not inclusive defies the truth and runs against reality. Prior to the dialogue kick off the Government had exerted all the efforts to make conducive the atmosphere for the dialogue in accordance with the terms agreed upon in the road map, and no condition was stipulated for participation in the dialogue. The fact that some political parties or activists boycotted the dialogue does not negate its inclusiveness.

Paragraphs 22 & 23

6. Dr. Mudawi, who has no organization registered in Sudan as indicated in para. 22, and Mr. Hafiz Idriss have been accused of committing specific offences under the national Criminal Act 1991 and are now under trial before the competent court. The first court sitting, which was attended by dozens of Sudanese prominent lawyers representing defense on behalf of the two accused and a considerable number of representatives of civil society and diplomatic community in Khartoum, took place on 14 June 2019. During their detention, the accused were availed regular access to their families, lawyers and the necessary medical care. The assumption that the two persons are being held solely for their legitimate work on protecting and promoting human rights in Sudan is a pre-judgment and contradict with the established reasonable prima facie evidence that stand against them.

7. Since the two accused are facing charges and are being tried before a court of law within the framework of an independent judicial system, we respectfully assert that the Independent Expert is not in a position to prescribe a specific action concerning the accused, nor he is mandated to interfere in the legal jurisdiction of a State.

Paragraph 25

8. The state of emergency is imposed only upon the occurrence of an imminent danger such as war, invasion, blockade, natural disaster…etc. The imposition of state of emergency is subject to the provisions of articles 210 – 212 of the National Interim Constitution. The declaration of a state of emergency shall be submitted to the National Legislature within fifteen days of the issuance thereof. The duration of the measures relating to the state of emergency shall expire on lapse of thirty days as from the date of issuance of the declaration if the National Legislature does not approve by a resolution the extension of its duration, or lapse of the duration approved by the National Legislature.

9. Article 2011 of the Constitution provides that the President of the Republic may during the state of emergency take, by virtue of law or exceptional order any measures that shall not derogate from the provisions of this Constitution, with a few exceptions, including by suspension of part of the Bill of Rights. However, there shall be no infringement on the right to life, sanctity from slavery, sanctity from torture, the right of non-discrimination on the basis of race, sex, religious creed, the right in litigation or the right to fair trial.

10. The state of emergency in Sudan has been imposed in only certain parts of the country which witness armed conflict; namely Darfur, Blue Nile and South Kordofan. The imposition is in compliance with the above mentioned constitutional provisions. Section 6 (1) of the Emergency and Public Safety Act 1997 provides that the provisions of the Criminal Act 1991 shall be applied to acts committed in contravention to this Act (i.e. Emergency and Public Safety Act), and to the regulations and orders made pursuant thereto.

11. Since the special courts and public prosecution offices which the Emergency Act provides that they may be established have not actually been set up, the procedures are normally assumed by ordinary courts and prosecution offices, and hence the procedures prescribed in the Criminal Procedures Act 1991 apply, and all the processes made in accordance with the emergency regulations are made under supervision of the competent judicial institutions. The Government is not desirous of prolonging the state of emergency in these areas as long as predominant peace and stability are restored, a matter that looks to be fully achieved very soon.

Paragraphs 26 & 27

12. Mr. Adam Abdulbari was accused and arrested for definite charges under the national criminal law, and not by reason of his work with UNAMID as indicated in the IE report. There are more than 2900 Sudanese nationals working as local staff with UNAMID,

a fact that proves that working with UNAMID or any other international or regional entity recognized by the State does not per se constitute a ground for accountability. The charges attributed to Mr. Abdulbari has nothing to do with any acts performed by him in his official capacity as a UNAMID member of the local staff, and so there is no any non-abidance by the provisions of the SOFA agreement signed by the Sudan and the UN/AU.

Paragraphs 28 & 29

13. It is regrettable that the report expresses the perception that attacks and arrests are targeted against "*Darfuri*" students. Such an utterance, notably when made by an international official, could entice sedition amongst people of a unified nation, in circumstances where almost the whole are convinced of the necessity for sustainable peace and stability in the country. All Sudanese nationals are equal before the law, and no group is targeted or discriminated against by reason of race, ethnicity, geographical affiliation or religion. It a principle enshrined in the Constitution and applied on the ground.

14. The allegation that the National Security Service raided on 27 January 2017 a student dormitory in Um Badda district is totally untrue. There is no any official record that documents such an incident.

15. Concerning the incidents of the University of Holy Quran in El Gazira state in March 2017, the police forces interfered to disperse the riot made by students, who set fire to the University's administrative compound causing property losses estimated at 500 thousand Pounds, and then took to the street violently targeting vehicles and public and private property. The ostensible cause of the riot was the revocation of exemption on university fees, the term of which expired in accordance with the Doha Document, and a decision to that effect was issued by the higher education authority. Though the University administration tried with the protesting students to settle the matter by facilitating payment of fees on easy installments, they refused the proposal and acted as described above.

16. In the aftermaths of the said incidents the police arrested the students who were identified to cause the damage, and criminal proceedings were initiated against them under section 67 of the Criminal Act 1991. The case was later on referred for trial. In Al Azhari University, there was no any interference by NISS or the police force on the date mentioned in the report (15 May 2017). The fact was that some students organized a strike inside the university campus preventing the rest of students of entering the campus. The university guard unit reported the matter to the police, who initiated criminal proceedings agents 20 students for charges relating to breach of public order. The proceedings were submitted to the court for trial, which summarily considered the case and issued a decision dismissing the case for lack of sufficient evidence. We submit that it is necessary to apply the criteria for distinction between a riot rampage that causes damage and sabotage and a lawful and peaceful gathering.

Paragraphs 30 & 31

17. In performing its duty under the urban development and planning strategy, the Physical Planning Authority of Khartoum state carried out a campaign in May 2017 to remove irregularly and randomly constructed buildings in Soba Aradi area. The operation claimed a number of shops, dwellings, schools and worship premises. Amongst the buildings demolished there were 2 of them used as churches and 19 others used for Muslim worship with the following detail:

- 2 mosques and 1 zawya (small Muslim prayer structure) in Block 8 Soba Aradi.
- 1 mosque in Block 7 Soba Aradi.
- 1 mosque and 2 zawyas in Block 5 Soba Aradi.

- 1 mosque and 1 zawya in Block 4 Soba Aradi.
- 1 mosque and 1 zawya in Block 12 Soba Aradi.
- 1 mosque in Block 1 Soba Aradi.
- 1 mosque in Block 2 Soba Aradi.
- 1 mosque and 2 zawyas in Block 9 Soba Aradi

.18 The report did mention names of religious leaders who were claimed to be intimidated or arrested. If the assumption refers to the two pastors who were released on 11 May 2017, they were not arrested or prosecuted by reason of their religious believes or activities. There were definite charges stood against them under the criminal law of the nation, which had been substantiated by evidence before a court of law for which all guarantees of fair trial had been realized.

Paragraphs 31 - 33

19. Since the issuance of an order by the President of the Republic in 15 January 2013, pre-publication censorship of newspapers ceased to exit. There are more than 30 daily newspapers published regularly in the Sudan. It seems that Mr. Nononsi was not used to look through local newspapers during his Sudan missions to touch on the extent of criticism and attack on the Government in order to judge whether there is freedom of expression or not. There is no red line prescribed by the authorities, but no freedom is absolute in a manner that encroaches upon other rights and violates the law, a principle recognized by the ICCPR.

20. There are thousands of internet sites and blogs which launch huge opposition campaigns against the Government, and there is no any measure taken by the Government to block or interfere with such sites. Social media are freely working throughout the country without any hindrance, a matter which rarely exits in the region. Sudan promulgated the Right to Information Act in January 2016 in compatibility with the Model Law for African States on Access to Information issued by the African Commission on Human and People Rights. The Press and Publication Act was one of the legislations reviewed by the Law Reform Committees, and is currently under the legislative process.

Paragraphs 34 & 35

21. In respect of the Sudan report on the status implementation of the recommendations made by the Independent Expert to the Government in his previous report, which was submitted in May 2017, we would like to indicate that this status report directly addressed the 5 recommendations of IE previous report, which has not specifically referred to the events of September 2013.

22. However, the process of compensation of victims and their families has completed by the committees assigned with this task. The total sum of compensation has been allocated the Ministry of Finance and deposited in a special account. Families of 50 deceased persons received the compensation, 20 others are under the process of receiving and concerning the 10 families who refused compensation and preferred to proceed with the cases, the proceedings are ongoing under investigation and prosecution, bearing in mind that 2 cases have already submitted for trial before the competent court.

Paragraphs 38 – 47

23. Sudan shares the Independent Expert the view that hostility has significantly decreased in Darfur. While the Decisive Summer Operation is a factor for causing such reduction, other important aspects are the main elements in restoring stability. These include the outcome of the national dialogue which manifested the Government's will of

achieving peace and reconciliation, the preparedness to go on with negotiations with those are yet to join the peace process and the efforts taken by the Government in facilitating humanitarian work.

24. With regard to the investigation and prosecution in Darfur, during the period between January and 31st 2016 to June 2016 the number of cases under investigation reported to and assumed by the Office of the Prosecutor-General for the Special Court in Darfur was 261, and 47 cases were referred for trail: 39 were decided on and 8 are pending at the appeal stage, the total number of cases is 336. Those included, inter alia, charges of murder, armed robbery and rape. The number of suspects under police custody is 276, of whom 53 are under trial. The suspects include military and security personnel, border guards, rebellions and civilians.

25. The 9 incidents of rape claimed to be committed in Sortoni IDPs camp have not been reported to Public Prosecutor or to the police by the UNAMID nor by any other body. It is preferable when speaking about instances of violation to rely on credible information and concrete evidence.

26. With regard to the working visas for UNAMID personnel, most of the applications for visas during the year 2017 were accepted, and in 2017 there are 5 applications pending under process. It is a generally recognized practice that visas for UNAMID junior staff are renewable for six months, while those for senior official, such as the head of mission, his deputy and head of Khartoum office are renewable for 12 months.

Paragraphs 49

27. The internally displaced persons in Azaza IDPs camps benefit of the basic services provided to the local communities. In order to further improve the provision of services, the state government has recently signed an agreement with UNICEF and some voluntary organizations to conduct a swift survey for the estimation of needs in the camp, and then to interfere on the basis of the survey results. HAC and other relevant agencies are fully ready to assist IDPs returning home, whenever the situation improves.

Paragraphs 51

28. The Sudanese Armed Forces (SAF) are strictly committed to respect the declaration of ceasefire which was repeatedly extended by the President of the Republic, in South Kordofan and the other armed conflict areas. SAF only act in self defense in respond any attack initiated by the rebel groups.

Paragraphs 53 – 55

29. Sudan has remained to host influx of refugees from South Sudan since the ignition of the armed conflict in that country. The actual number of Southern Sudan refugees is estimated at more than million persons. Despite this huge number, the contribution of international community is weak and below the ambition, constituting only 20%, while the crises with its economic, social and security dimensions overweighs the capability of Sudanese State. Due to this issue, Sudan pays exorbitant price in many aspects such as environment deterioration and overload pressure on services, including water, health, infrastructure and security problems.

30. The influx of Southern Sudan refugees has extended to all five states of the Sudan, in addition to those who were unable to return home after secession of the South in 2011. Sudan established 14 camps and entry centers in the five states adjacent to South Sudan. Large numbers of refugees live in various Sudanese cities, particularly the capital Khartoum. Sudan is striving hard to provide basic services in the refugee camps in collaboration with UNHCR and some other partners.

Paragraphs 56 - 59

31. The issue of human trafficking is an international phenomenon and Sudan should not be left bear alone the responsibility to address it. Sudan has vast borders extending to about 6000 kilometer with only 20 control stations with inadequate equipments, bearing in mind the insufficient international technical assistance and the impact of the UCMs imposed on the country during the last two decades.

32. It is true that the word "exploitation" is not defined in the Anti- Trafficking Act 2014. However the Sudan ratified Palermo Protocol in 2004, and this Protocol attempted to define this term in article 6 (a). The Protocol is deemed as part of the national Constitution, pursuant to Article 27 (3) of the Interim Constitution of the Republic of the Sudan. Further the lawmakers safeguarded to specify a definition for the term, as there might occur future development in the definition in accordance with the international norms.

33. Sudan's efforts in combating human trafficking using its limited resources could not be ignored. These efforts includes development of policies and legal framework, coordination and engagement with neighboring countries and relevant partners and organizing regional and international initiatives related to trafficking, such as hosting the regional conference on human trafficking and smuggling in the Horn of Africa in October 2014, which resulted in the issuance of Khartoum Process.

34. The Government's efforts in pursuing traffickers and rescuing protecting victims are incessant. A lot of operations performed by the security forces resulted in the arrest of many traffickers and release of large numbers of victims held as hostages. The very latest operation took place in Wadal Hilaiw in Kasala East Sudan on 11 July 2017, leading to the arrest of 7 traffickers and release of 71 victims held by them.

Paragraphs 60 - 62

35. The austerity measures announced by the Government in November 2016 were ordinary actions that are usually taken by any State to improve performance of its economy, especially when such State is one of the underdeveloped and more significantly when it is encountered by imposed unilateral coercive measures. However the measures announced by the Government of the Sudan simultaneously include mitigating elements to relieve the burden on individuals, especially the poor. The Government sponsored a package of projects and programs which include, inter alia:

- The rural women project, benefiting 45 000 families.
- The national health insurance was increased to 42%.
- Adoption and implementation of the comprehensive program of social security for all the states, which includes the fields of livelihood, health, water and education.
- Adoption and implementation of the direct cash support program targeting 50 000 families.
- Implementation of the World Bank started, January 2017, for supporting and improving implementation the Social Safety Net Projects.
- Enhancing and sponsoring corporate social responsibility programs targeting the development of local community.
- Intensifying the efforts to promote coordination of poverty reduction programs.
- Development of a package of social policies such as the national policy for addressing the problem of homelessness and the national policies for persons with disabilities and the elderly.

36. Sudan adopts a decentralized system of government with a national government and 18 states governments. There is the national Ministry of Health which undertake the general health policy, and 18 regional ministries of health in the states which bear the responsibility of providing and facilitating health services. The apparently inadequate percentage allocated to health, as mentioned in the draft report, is the portion of the national Ministry of Health, while the state ministries of health enjoy their own budgets which are relatively reasonable in the circumstances of the country available resources.

Paragraphs 64 – 69

37. The currently ongoing legal reform process mentioned in the draft report has in its priority the review of domestic legislations in a view of harmonizing them with the constitution and internationsl and regional instruments ratified by the Sudan, in particular human rights instruments. The Committees tasked with the reform process completed their work and submitted their reports and recommendations to the Minister of Justice, who submitted the same to the Cabinet in the forms of Bills of law to be passed by the National Legislature.

38. The reason for the delay of the process is the workload of Parliament in the current period which addresses the legislative accommodation to the outcome of the national dialogue, that required a range of legislative (constitutional and legal) and executive measures paving the way for the national reconciliation government, and the arrangements for the adoption of the new permanent constitution. Further, the legislations that need amendment are plenty, and require a period of time.

39. Concerning ratification of human rights instruments, and in addition to the five core instruments ratified by the State, Sudan accepted the UPR recommendations to ratify 5 human rights instruments, including CAT and the International Convention for the Protection of all Persons from Enforced Disappearance. Even in respect of the recommendations to ratify CEDAW, which have been noted by the Sudan during the UPR review, there are ongoing national efforts and wide consultations between different components of society to pursue those who oppose ratification of such convention of the necessity to accede thereto. Sudan made a pledge to that effect in the UPR Working Group Report (A/HRC/33/8/Add.1).

40. However, domestication of the ratified human rights instruments in national laws, though important, is not as critical as it might be seen, since all the rights and freedoms embodied in those instruments are self enforceable by the national courts. Article 27 (3) of the Interim Constitution provides that "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill".

Paragraphs 70 – 76

41. The establishment of the modern Sudanese judicial system refers back to the year 1899, based on the common law principles which assure independence of the judiciary and the rule of law. Equality before the and subjection of the State organs to the law and jurisdiction of the courts is a fundamental principle provided for in the Interim Constitution and the Interpretation of Laws and General Clauses Act 1974, and constantly applied by the courts of law.

42. Designation of a specific set of courts to consider certain types of offences of serious nature is not intended to discriminate between litigants and accused persons in appearing before justice. The grave impact of such offences on the community, besides the need to allocate specialized judicial staff capable of efficiently and fairly assuming the proceedings of such offences, are the rational for establishment of specialized courts.

43. There is no "Criminal Court for Serious Crimes" exists in such general sense, as mentioned in paragraph 72 of the II draft report. There are certain specialized courts established by virtue of provisions in some legislations such as the Anti Terrorism Act, Combat of Human Trafficking Act and the Child Act. These are specialized courts whose judicial and paralegal staff are qualified and trained in the relevant fields, which are usually governed by international and regional obligations under instruments ratified by the State, in addition to the domestic law.

44. The establishment of special courts and prosecution offices under the Emergency and Public Safety Act 1997 is not mandatory. Section 6 (1) of this Act provides: *"The Chief Justice ...**may** establish...etc.*. Such courts, when established, are concerned with laws, orders and measures under the Emergency Act, as demonstrated in paragraphs 8 - 11 above.

45. The Constitutional Court is a judicial institution separate and independent of the Judiciary. It is the custodian of the Constitution and the highest body competent to protect human rights and fundamental freedoms, including by considering challenges against judicial decisions made by the courts of the Judiciary, where the challenge to the decision involves constitutional or human rights violation.

46. The separation of the office of the Attorney General from the Executive, which commended by the draft report, is a further step in further enhancement to the independence of the judicial functions, notably in the field of criminal justice and access to justice. On the other hand, the procedural immunities granted to certain officials have never stood as hindrance against accountability or prosecution of any official whenever there arises genuine suspicion that such official has committed an offence or perpetuated a human right violation.

Paragraphs 77 - 81

47. The National Commission for Human Rights assumes its mandate and functions as prescribed in the Constitution and the law. The chairperson, deputy chairperson and the secretary general of the Commission have recently been appointed. This appointment actually reflected diversity, as the Chairperson is a lady and the Deputy Chairperson is Christian. The outcome of the national dialogue devoted a considerable attention in respect of reinforcing the Commission, and the measures for implementing such recommendations.

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Report of the Independent Expert on the situation of human rights in the Central African Republic

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the situation of human rights in the Central African Republic, Marie-Thérèse Keita Bocoum, prepared pursuant to Council resolution 33/27. The report covers the period from July 2016 to June 2017 and describes the overall evolution of the human rights situation in the Central African Republic and the major developments affecting it.

The period was marked by an increase in the number of human rights violations and abuses, linked to the upsurge in fighting and to attacks by the various armed groups since September 2016. Most of the abuses were committed during clashes between groups or targeted attacks against civilians or in connection with movements by armed groups and were the work of the ex-Séléka coalition led by the Front populaire pour la renaissance de la Centrafrique, as well as of the Union pour la paix en Centrafrique, the 3R group and anti-Balaka groups acting alone or on behalf of the armed coalition. There are reports that, in certain cases, ethnic or religious communities were targeted because of their perceived affiliation with an armed group. Thousands of children have been re-recruited into armed groups after two years of efforts to reintegrate them into their communities of origin.

Peace and reconciliation initiatives are essential but have so far failed to keep the guns at bay. Partners, neighbouring countries and friends of the Central African Republic must work to bring about a peace process that is transparent, inclusive and respectful of national sovereignty. Above all, peace efforts should never be promoted at the expense of justice for victims, given that impunity is one of the structural causes of violence in the country. The progressive establishment of the Special Criminal Court sends a strong signal in this regard.

The humanitarian situation has deteriorated as a result of the upsurge in violence, giving rise to an increased number of displaced persons in the interior of the country and in Bangui, notably in the PK5 neighbourhood. Nearly half the Central African population is in a situation of need.

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Report of the Independent Expert on the situation of human rights in the Central African Republic

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 33/27 of 30 September 2016, in which the Council renewed the mandate of the Independent Expert and requested her to submit a written report to it at its thirty-sixth session.

2. The report of the Independent Expert covers the period from July 2016 to June 2017, during which she conducted two visits to the Central African Republic, from 25 January 2017 to 3 February 2017 and from 7 to 16 June 2017. She travelled to Bangui, Bambari, Birao and Obo. For security reasons, the Independent Expert was not able to return to Bangassou as had originally been her plan.

3. The Independent Expert met with the Prime Minister and several of his ministers, including the Ministers for Foreign Affairs, Defence, Interior, Justice and Human Rights, and National Reconciliation, as well as the Minister Counsellor in charge of disarmament, demobilization, reintegration and repatriation. She also met with the senior advocate general of the court of appeal in Bangui; the President of the National Assembly and chairs of the committees; the transitional president, Ms. Samba-Panza, and other transition officials; and political party representatives, including opposition leaders. She wishes to thank all her interlocutors for their cooperation.

4. The Independent Expert also held discussions with the senior management and chiefs of the various civilian, military and police components of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), as well as with representatives of United Nations specialized agencies, the diplomatic corps, the Economic Community of Central African States and various international humanitarian organizations. In addition, she met with representatives of civil society and of human rights and women's organizations; with victims' representatives; with representatives of the religious council and other religious leaders; and with representatives of the traditional chieftancy system, in particular those from Bangassou. She was also able to meet with representatives of the main ex-Séléka and anti-Balaka armed groups.

5. In November 2016, she participated as an observer at the donor conference organized jointly in Brussels by the European Union, the Government of the Central African Republic, the United Nations and the World Bank, the aim of which was to strengthen political and financial support for national efforts to promote peace, security, reconciliation and reconstruction, which are described in detail in the National Recovery and Peacebuilding Plan.

6. The Independent Expert thanks the Government for its cooperation and assistance and the United Nations and MINUSCA, especially the Human Rights Division and its staff, for their support of her mandate and during her visits, and all the individuals and associations that were kind enough to share their assessment of the human rights situation in the country.

7. The Independent Expert presented an oral update to the Human Rights Council at its thirty-fourth session and met with representatives of the diplomatic corps and of non-governmental organizations in Geneva.

II. General situation in the country

A. Security situation

8. The reporting period was once again marked by outbreaks of violence with increasingly frequent and intense clashes between armed groups, leading to disastrous consequences for civilians. Virtually no province has been spared from acts of violence perpetrated by the various armed groups. Sporadic incidents also took place in Bangui, including attacks against MINUSCA peacekeepers.

9. Power struggles between and within the armed groups, ethnic tensions, attempts to control areas rich in resources and seasonal migration movements (by livestock herders) have led to an escalation in violence not seen since 2014.

10. In the provinces of Ouaka and Haute-Kotto, territorial clashes between the coalition of the Front populaire pour la renaissance de la Centrafrique (FPRC) and the Union pour la paix en Centrafrique (UPC) have affected many civilians, who are increasingly targeted on the basis of their ethnicity. Between September and November 2016, a series of battles between FPRC and UPC in Bria and between ex-Séléka and anti-Balaka fighters in Kaga Bandoro led to the displacement of nearly 53,000 persons.

11. In December 2016, FPRC and its allies, including anti-Balaka elements, launched an offensive to dislodge UPC from its stronghold in Bambari. During their advance towards Bambari, the armed coalition attacked numerous villages to the east and north of the city and committed numerous human rights abuses against the population, especially the Fulani.

12. Faced with an imminent attack on Bambari, MINUSCA took military action on 26 February 2017 to halt the advance of the FPRC coalition, which resulted in the death of the FPRC chief of staff and injuries to seven others among its members. MINUSCA obtained the withdrawal of the armed groups from the city, including that of Ali Darassa, the head of UPC, who had set up his headquarters there. The local anti-Balaka chief, Gaétan Boadé, also left Bambari, which MINUSCA designated a "city free from armed groups".

13. However, Ali Darassa's departure from Bambari for the south has merely shifted the locus of the conflict towards the prefectures of Basse-Kotto, Mbomou and Haut-Mbomou. Between 20 and 22 March, the FPRC coalition and anti-Balaka elements reportedly killed more than 23 civilians in Bakouma, in Mbomou prefecture. On 15 April, UPC reportedly attacked the locality of Zémio, in Haut-Mbomou prefecture, as well as the MINUSCA base during the night of 15 April. The attack left two persons dead on the UPC side and several wounded.

14. On 10 May, in an ambush on the road between Rafaï and Bangassou, anti-Balaka elements allegedly kidnapped and killed Cambodian and Moroccan peacekeepers in the deadliest attack against a MINUSCA convoy since the Mission's establishment. Five United Nations peacekeepers were killed and 10 were injured.

15. On 13 and 14 May, alleged anti-Balaka elements operating independently or at the behest of the FPRC coalition carried out an assault with heavy weaponry against the city of Bangassou in the prefecture of Mbomou. The attacks targeted the primarily Muslim neighbourhood of Tokoyo, as well as the MINUSCA base, resulting in the death of one peacekeeper and massive displacements of civilians. There are reports that 3,000 persons sought refuge in the north of the Democratic Republic of the Congo, which had been struck by an epidemic of the Ebola virus.

16. In Bria, the security situation deteriorated once again in May 2017, when fighting broke out between two factions of the FPRC/anti-Balaka coalition on 14 May 2017, resulting in dozens of deaths and massive population displacement. On 20 June 2017, the day after the ceasefire declared in Rome, clashes had resumed and had caused the death of several dozen combatants and civilians.

17. The Lord's Resistance Army (LRA) also continues to commit numerous human rights abuses against the population of the prefectures of Mbomou and Haut-Mbomou as Ugandan and American troops deployed under the African Union Regional Task Force for the elimination of the Lord's Resistance Army gradually withdraw. The departure of these troops leaves a security vacuum in the east, an area subject to attacks from not only LRA but also other armed groups and criminal organizations. The Independent Expert met people in this area who are very concerned for their safety.

18. In the north-western part of the country, heightened tensions persist between the Fulani and the villagers, related in particular to livestock migration, cattle theft and punitive expeditions. In the prefectures of Nana-Mambéré and Ouham Pendé, the anti-Balaka and the armed group 3R ("Return, Reclamation and Rehabilitation") have committed many abuses, in particular around the localities of Niem, Dankouri, Koui and Bocaranga.

19. The security situation in the capital, Bangui, continues to improve as a result of the actions of MINUSCA peacekeepers, who serve as a deterrent to potential troublemakers. Yet, despite the return of many displaced persons to the PK5 neighbourhood at the beginning of the year, particularly from the M'Poko airport site, the situation remains volatile. For example, the death on 7 February 2017 of Youssouf Malinga, also known as "Big man", in this neighbourhood led to a wave of reprisals, including murders and the burning of houses.

20. Virtually no progress has been made in implementing the disarmament, demobilization, reintegration and repatriation programme or in reforming the security sector. An advisory and monitoring committee on disarmament, demobilization, reintegration and repatriation has been established and meets regularly in the presence of representatives of the armed groups. However, the latter appear to be participating in order to ensure that they have a place in the programme without making any real commitment on the ground to ending the violence in the areas under their control.

21. The Independent Expert welcomes the efforts made by the European Union in the training, accreditation and certification of the Central African Armed Forces. Of the three battalions expected to be trained by 2018, 600 soldiers have already completed training. Given the situation of violence, a majority of the members of civil society and certain representatives of the authorities with whom meetings were held requested that the embargo be lifted in order to provide the army with equipment and weapons. The Independent Expert was informed that the Central African Republic could obtain a dispensation from the arms embargo in order to equip its forces and that the Government had approached the international community with a view to requesting help from other partners in accelerating the training and providing equipment and other logistical resources to the new Central African army. The Government has also undertaken the recruitment, through a joint committee composed of representatives of the State and MINUSCA, of 500 police officers and gendarmes.

22. The Independent Expert has observed delays in the restoration of State authority outside Bangui. The security situation is such that State officials are discouraged from expanding operations to certain regions under the control of armed groups. This is particularly true in the east, where there is only one gendarme in Zémio and in Mboki, and none in the sub-prefecture of Bambouti. At the end of June 2017, armed groups appeared to hold sway over 12 of the 16 prefectures, representing nearly 70 per cent of the national territory.

B. Political context and mediation efforts

23. The escalation in violence in September 2016 undermined the Government's efforts to restore the authority of the State, as well as regional and national initiatives in favour of peace.

24. With the support of its partners, the Government had, however, made significant progress in developing a legislative and institutional framework, including the adoption of organic laws, accession to international human rights conventions, the adoption of a recovery plan and the appointment of the Prosecutor of the Special Criminal Court.

25. The National Recovery and Peacebuilding Plan, which was developed by the Government in partnership with the United Nations, the European Union and the World Bank, was approved by the National Assembly on 26 October 2016. It is based on the following three pillars: support for peace, security and reconciliation; renewal of the social contract between the State and the people; and economic recovery and revitalization of the productive sectors.

26. The donor conference held on 17 November 2016 in Brussels demonstrated the willingness of the international community to assist the Central African Republic through pledges totalling $2.2 billion to finance the National Recovery and Peacebuilding Plan for three years. The actual disbursement of these pledges has, however, been slow to materialize.

27. During her last visit, the Independent Expert was informed that some budget lines had started to become available, notably those related to disarmament, demobilization, reintegration and repatriation, and that the authorities were willing to establish a national secretariat for implementing the National Recovery and Peacebuilding Plan and establishing contacts with partner States.

28. During the special session held from 3 to 17 January, the Assembly adopted laws on the establishment of the other institutions provided for in the Constitution, including the Economic and Social Council, the National Mediation Council, the High Council for Communication and the High Authority on Good Governance.

29. MINUSCA also supported the deployment of more than 600 administrative staff, the restoration of administrative buildings, mainly through the funding of quick-impact projects, and the launch of a territorial administration guide.

30. The States in the region, in cooperation with the Economic Community of Central African States and the African Union, have begun mediation efforts with a view to promoting a peace agreement between the Government and the various armed groups. The African Initiative for a Peace and Reconciliation Agreement in the Central African Republic, endorsed at the African Union Summit held in Addis Ababa on 30 and 31 January 2017, has enabled better coordination of mediation efforts, which were initially somewhat scattered.

31. On 19 June 2017, all armed groups, with the exception of 3R, met in Rome where, under the aegis of the Community of Sant'Egidio, they signed the Sant'Egidio Agreement, which provided for an immediate ceasefire. The day after the signing of the agreement, nearly 100 people were reportedly killed in Bria in clashes between FPRC and anti-Balaka fighters. Violence continues on the ground, potentially casting doubt on the credibility of this agreement.

32. Lastly, a coordination meeting between the peace mediators was held in Brussels on 21 June 2017 in order to agree on a road map for the implementation of the agreement.

33. Numerous civil society actors have expressed concern at the lack of transparency of these initiatives, the lack of communication from the Central African Government concerning the agreement and persistent rumours of negotiations to secure an amnesty for war crimes and crimes against humanity. Nevertheless, members of the Government assured the Independent Expert of their commitment to combating impunity.

34. The Independent Expert found it regrettable that no women were involved in the mediation initiatives, although she was encouraged by the establishment of a network for women's leadership in the Central African Republic, which promotes the participation of women in all national processes, including those relating to peace and security. She also encourages the authorities to involve traditional leaders in their peace initiatives at the local level.

C. Humanitarian situation

35. The humanitarian situation has deteriorated severely as a result of massive displacements caused by the resumption of fighting. More than 100,000 new internally displaced persons were registered in affected areas between September 2016 and February 2017. Half of the country, or 2.2 million people, remains dependent on humanitarian assistance.[1]

36. On 5 December 2016, a humanitarian response plan for the period 2017-2019 was presented in Geneva. It provides for a budget of $399 million to help 1.6 million Central Africans. It should be recalled that the plan was drawn up before the resumption of fighting and does not take into account needs linked to the new displacements.

[1] See www.un.org/apps/newsFr/storyF.asp?NewsID=39133#.WWiBIIiGPcs.

37. Regrettably, the funding provided by institutional donors has fallen far short of that required to meet humanitarian needs, despite advocacy on the part of humanitarian organizations, MINUSCA and the United Nations specialized agencies. By late May 2017, the humanitarian response plan was funded at only 27.8 per cent. According to the Office for the Coordination of Humanitarian Affairs (OCHA), all the warning signs are present, yet the quality and scope of the humanitarian response is being reduced. Access to communities in need, already affected by the security situation, risks being further limited if humanitarian partners cease operations or if logistical resources, such as air transport services, are cut back for lack of funds.

38. The Independent Expert joins humanitarian actors in calling on the international community to mobilize to avert the impending humanitarian crisis, the consequences of which in the future will be far more costly if nothing is done. Humanitarian actors have, moreover, continued to operate in a highly volatile security environment. On 5 May 2017, OCHA announced that four humanitarian organizations had decided to suspend their activities temporarily in the prefecture of Ouham in the light of the threats they faced. More than 300 incidents in 2016 and more than 1,667 security incidents involving humanitarian workers have been recorded since the beginning of the year.[2] Furthermore, 72 per cent of health-care facilities have been damaged or destroyed by violence and looting, and health-care facilities in the vast majority of cases depend on humanitarian assistance.[3]

III. Human rights situation

39. The period was marked by an increase in human rights violations and abuses linked to the upsurge in fighting and to attacks by the various armed groups. Most of the abuses were perpetrated by ex-Séléka and anti-Balaka armed groups; they included killings, acts of torture and inhuman or degrading treatment, sexual violence, abductions, deprivation of liberty and arbitrary arrest, extortion and looting, recruitment and exploitation of children, the occupation of schools and health centres and attacks on them, and denial of humanitarian assistance. In this context, vulnerable groups, including persons with disabilities, face even greater challenges in terms of access to food, sanitation and medical assistance.

40. The Independent Expert also finds it regrettable that the national security forces commonly have recourse to prolonged and unlawful pretrial detention and that conditions of detention remain very poor.

41. The Independent Expert welcomes the adoption and promulgation on 20 April 2017 of the Act establishing the National Commission on Human Rights and Fundamental Freedoms. She encourages the Government to bring it into operation with the technical support of the Human Rights Division of MINUSCA and to ensure that the criteria of professionalism, integrity and gender balance are respected in the selection of commissioners.

A. Abuses attributed to armed groups

42. The period was marked by a significant increase, from November 2016, in human rights abuses perpetrated by armed groups.[4] Between July 2016 and June 2017, the Human Rights Division of MINUSCA recorded 1,976 cases of violations and abuses, which left 3,423 victims (2,120 men, 327 women, 189 boys and 116 girls, and 113 children and 558 adults who were not identified).

[2] Identified by the International NGO Safety Organization; see www.ngosafety.org/country/central_african_republic.

[3] See www.msf.fr/actualite/dossiers/republique-centrafricaine-crise-silencieuse.

[4] In 2015, MINUSCA reported 1,278 human rights violations, which left 1,786 victims (see A/HRC/33/63, para. 36).

43. Most of the abuses were committed during clashes between groups or targeted attacks against civilians or in connection with movements by armed groups and were the work of the ex-Séléka coalition led by FPRC (including both ex-Séléka and anti-Balaka elements), as well as of UPC, the 3R group and anti-Balaka groups acting alone or on behalf of the armed coalition. There are reports that, in some cases, certain communities were targeted because of their perceived affiliation with an armed group

44. On 12 October 2016, ex-Séléka fighters killed at least 37 civilians, injured 57 and forced thousands of people to flee when they razed the camp for internally displaced persons in Kaga Bandoro. The fighters destroyed 175 houses and 435 huts in the camp and surrounding areas, despite the presence of MINUSCA peacekeeping forces.[5]

45. In the days that followed the fighting of November 2016 between FPRC and UPC in Bria, FPRC elements reportedly targeted the Fulani community for its supposed affiliation with UPC, carried out killings and abductions, and occupied hospitals, preventing injured Fulani from receiving treatment. Some of the dead were allegedly robbed and mutilated. For their part, UPC elements and armed Fulani reportedly attacked civilians on the roads outside Bria, executed and abducted men, and raped girls. They were reported to have specifically targeted Arab Muslims and Gula.

46. On 11 and 12 December 2016, UPC retook the town of Bakala, to the north of Bambari, which they had been driven out of by the armed coalition. UPC elements took revenge on the population for their previous defeat and reportedly killed at least 88 people in Bakala and at least 57 at neighbouring or nearby mining sites. It was reported that dozens of people, including children, were killed in the complex of the sub-prefectural school and close to the gendarmerie station, where UPC had invited them to attend a meeting. The bodies were allegedly dumped in the Ouaka River and in wells. UPC elements also reportedly killed many civilians during offensives in several villages in the prefectures of Ouaka and Basse-Kotto between February and May 2017.[6]

47. More than 400 people, including women and children, were reportedly killed in the prefectures of Haute-Kotto and Ouaka alone during the fighting and attacks by armed groups between November 2016 and February 2017.

48. Anti-Balaka fighters are accused of responsibility for a large number of killings of Fulani civilians, committed either alone or alongside the FPRC coalition. In mid-February 2017, anti-Balaka fighters reportedly killed at least 16 ethnic Fulani civilians near Ippy, Ouaka prefecture, during an ambush on a truck carrying people trying to reach safety in Bambari.[7]

49. Between 7 and 15 March, for example, attacks carried out by anti-Balaka elements on the village of Site Chinois, to the south of Bria, reportedly resulted in the deaths of around nine Fulani civilians and massive population displacement.

50. Armed groups have deliberately targeted the civilian population. Between 20 and 22 March 2017, the FPRC coalition and anti-Balaka fighters are alleged to have killed more than 23 civilians in Bakouma, Mbomou prefecture. On 11 May 2017, the local branch of the Red Cross in Alindao, Basse-Kotto, reported that 37 bodies had been recovered and 110 people injured in the locality following attacks carried out against the population between 8 and 10 May, allegedly by UPC militias. The local Red Cross documented 115 deaths following an attack on the town of Bangassou on 13 May 2017.

51. During clashes between anti-Balaka and ex-Séléka UPC in Alindao, Basse-Kotto, in mid-May, fighters set fire to more than 360 houses, according to the local Red Cross.

52. In the north-west of the country, following the theft of 600 cattle from an encampment of Fulani herders on 27 April 2017, allegedly by anti-Balaka elements, 3R fighters were reported to have attacked the town of Niem in Nana-Mambéré prefecture on 2 May 2017, causing population displacement and the deaths of 11 people.

[5] Human Rights Watch, "Killing Without Consequence", July 2017.
[6] Information received from the Human Rights Division of MINUSCA.
[7] Human Rights Watch, "Killing Without Consequence", July 2017.

53. LRA continued to commit serious abuses against the civilian population in the areas under its control in the east of the Central African Republic, to attack villages, to loot property and to abduct civilians almost routinely, subjecting them to forced labour, forced recruitment, sexual slavery, sexual violence and forced marriage. Between July 2016 and June 2017, the Human Rights Division documented more than 109 incidents, which left over 360 victims.[8] The departure of Ugandan and American international forces is not only leaving a security vacuum, but is also affecting the provision of assistance to the victims of LRA.

B. Violations attributed to the national armed forces

54. Arbitrary arrests and detention remain a serious obstacle to the administration of justice in the Central African Republic. All 615 cases of arbitrary detention documented by the Human Rights Division between July 2016 and June 2017 were related to the security forces' failure to respect the 72-hour legal limit (renewable once) for detaining suspects before bringing them before a judicial authority. This situation remains due to the absence of a functioning judiciary, to technical and logistical constraints stemming from the security forces' lack of training and to the unavailability of the resources necessary to ensure compliance with legal procedures.

55. The Independent Expert was also informed of a case that occurred in the context of the violence in the PK5 neighbourhood of Bangui in early October 2016, where elements of the Central African Armed Forces reportedly shot dead two people.

C. Refugees and displaced persons

56. The Central African Republic has experienced a new wave of mass displacement as a result of the armed violence. As at 25 May 2017, 503,600 Central Africans, that is nearly 100,000 more than in the previous year, were internally displaced. As at 30 June 2017, 481,350 had fled, mostly to neighbouring countries.[9]

57. In early 2017, the Government ordered the closure of the displaced persons' site at M'Poko airport. As at 15 January, 17,151 persons had left the site and returned to the third and eighth districts and the suburbs of Bimbo. Since December 2016, the Ministry for Social Affairs and National Reconciliation has promoted these returns through its project to support the return and reintegration of displaced persons and refugees in the Central African Republic and its "Christmas at Home" operation, providing lump-sum payments to the displaced.

58. The problems of looting and destruction of goods and property and their restitution remain unresolved and need to be addressed in order to enable the return of refugees, while avoiding the creation of new flashpoints. The Independent Expert reiterates her recommendation to establish conditions under which the informed, voluntary, dignified and sustainable return of refugees and displaced persons and their reintegration into their community through the promotion of "living together" is possible.

D. Violence connected with accusations of witchcraft

59. The ongoing conflict and traditional beliefs continue to fuel the phenomenon of witchcraft and crimes that, while supposedly prompted by accusations of sorcery, actually involve premeditated acts perpetrated by armed groups, more often than not to extort money from the victims. The Human Rights Division has documented 45 cases of violence

[8] According to LRA Crisis Tracker, LRA was involved in 73 incidents, killed 17 people and abducted 216 others in the Central African Republic between July 2016 and June 2017; see www.lracrisistracker.com.

[9] See http://data.unhcr.org/car/regional.php.

committed against persons accused of witchcraft, claiming 77 victims, 38 of whom were men, 32 women and 7 children.

60. Under Central African law, offences of witchcraft carry a maximum sentence of life imprisonment with forced labour if they cause death. This situation is of deep concern because of the obvious questions it raises as to evidence.[10]

61. Most of those accused of witchcraft and charlatanism are women and children, and a large number end up in prison. When MINUSCA staff visited the Bimbo women's prison in Bangui in early 2017, 21 of the 46 women detainees were accused of witchcraft.[11] Sometimes, certain accused are charged, tried and convicted by the courts.

62. On each visit and in her reports, the Independent Expert continues to alert the authorities to these practices and the false allegations made by members of armed groups in order to terrorize and extort money from the population. She reiterates her previous recommendations, in particular the recommendation to prosecute and punish all perpetrators of violations against persons accused of witchcraft; carry out awareness-raising campaigns to counter these practices; and begin a national debate on the issue, including in respect of existing legislation, in order to find real solutions that respect universal human rights standards.

E. Gender-based violence

63. The resurgence of widespread violence has gone hand in hand with a significant increase in acts of sexual violence committed by armed groups during this period. In 2016, MINUSCA recorded 179 cases of conflict-related sexual violence against 92 women, 86 girls and 1 boy; between January and May 2017, MINUSCA documented 91 cases involving 48 women and 72 girls.[12] The true number is likely to be higher, as victims are reluctant to report such crimes because of fear of stigma or reprisals, and because the lack of security has prevented access to certain areas and hampered investigation and documentation efforts. The absence of a judiciary outside the capital also deters victims from filing complaints.

64. The vast majority of perpetrators are reportedly armed groups operating in the conflict zones, but also Fulani herders who commit acts of sexual violence during clashes or against women and girls they encounter on seasonal migration routes. In many cases, the victims are gang-raped. Outside urban centres, victims rarely have access to medical and psychosocial support.

65. On 14 June 2017, President Touadéra inaugurated the headquarters of the joint rapid response unit to combat sexual violence against women and children, stating that approximately 60,000 cases of violence against women and children had been recorded since 2014. The unit, which comprises 29 commissioned and non-commissioned police and gendarmerie officers (including 10 women), aims to promote an enabling environment for the prevention and punishment of gender-based violence and violations of the rights of the child in the Central African Republic.

66. During the reporting period, the Independent Expert continued to meet with many women's organizations, to encourage their initiatives and to urge partners to support their work. She visited, inter alia, a women's association in the seventh district of Bangui that has set up income-generating activities and organizes education and training.

67. The measures implemented by the Secretary-General of the United Nations and MINUSCA in response to numerous reported cases of sexual exploitation and abuse by international forces in 2015 and 2016 appear to have had a deterrent and preventive effect. The Independent Expert notes, however, that the investigations undertaken have rarely been made public and that few have resulted in convictions. She encourages partners to provide

[10] Report of the Mapping Project, chap. V, D.1.

[11] MINUSCA, internal report, February 2017.

[12] MINUSCA produces monthly reports on conflict-related sexual violence.

funds for effective legal assistance for victims, and States to conduct inquiries and bring the perpetrators to justice.

68. The Independent Expert recalls the Secretary-General's strategy to improve the Organization's system-wide approach to preventing and responding to sexual exploitation and abuse, which seeks to put victims first, in accordance with the principles of "do no harm", confidentiality and informed consent in the best interests of the victim.[13]

F. Situation of children

69. The United Nations has reported an increase in the recruitment and use of child soldiers during the recent upsurge in violence. OCHA estimates that from 4,000 to 5,000 children still belong to armed groups. Reportedly, only half of the 9,000 children released and handed over to the Ministry of Social Affairs and then to the United Nations Children's Fund (UNICEF) since 2014 have benefited from a full reintegration programme.

70. Children have continued to be used as combatants, guards, human shields, porters, messengers, spies, domestic workers or sex slaves. There are also reports of Fulani children being abducted by armed groups, especially anti-Balaka fighters, who allegedly demand livestock as ransom for their release.

71. On 13 May 2017, FPRC, which has until now been reluctant to cooperate with the United Nations specialized agencies on the issue of forcibly recruited children, signed a directive ordering its commanders to refrain from recruiting children and to identify the children within their ranks, with United Nations support.

G. Economic, social and cultural rights

72. Armed groups have spread across the centre and east of the country, seeking to take control of and plunder natural resource-rich areas and to control trade and seasonal migration routes. The ensuing destruction of goods and property, looting and mass displacement have driven the already destitute population further into poverty. The Panel of Experts on the Central African Republic, in its final report (S/2016/1032), again denounced the cross-border trafficking by armed groups of weapons, gold, diamonds, illicit drugs and animals into the Democratic Republic of the Congo and Cameroon. Armed groups are also setting up roadblocks in order to collect taxes in areas under their control, specifically targeting diamond miners, merchants and collectors, and impeding the free movement of goods and people.

73. Although the National Recovery and Peacebuilding Plan contains numerous provisions aimed at the economic recovery of the Central African Republic, their implementation has been slow, mainly because donors and investors are reluctant to launch economic activities given the lack of security and the scant progress made with regard to transparency in financial management and the fight against corruption. The Central African Republic ranks 40th out of 50 African States and 159th out of 176 countries globally in terms of corruption.[14]

74. The development of economic activities remains a key factor in reducing the appeal of weapons and enabling the population to enjoy the benefits of peace. In fact, many young people are pushed towards armed groups by joblessness and a lack of economic prospects. There is a great need to work on youth employment policies and initiate labour-intensive works that will offer job opportunities in addition to those created in the civil service.

75. Basic social services, in particular education and health, are non-existent or largely insufficient outside Bangui as a result of the security situation, the lack of staff and

[13] See the report of the Secretary-General on special measures for protection from sexual exploitation and abuse: a new approach (A/71/818) and the report of the Mapping Project, chap. V, point 7.

[14] According to Transparency International, see www.transparency.org/country/CAF.

infrastructure, and mass displacement. The Independent Expert noted this situation during her trips to Obo and Birao.

76. Several schools remain or have been newly occupied by armed groups, mainly ex-Séléka fighters, and are being used as barracks or bases. The acts of violence and abuse committed by armed groups in and around schools are undermining the safety of students and teachers.[11]

IV. Efforts to fight impunity and transitional justice

77. The Independent Expert continues to believe that the fight against impunity is one of the keys to resolving the crisis in the Central African Republic. She welcomes the progress made in establishing the Special Criminal Court and ensuring its effectiveness. She deplores the fact that armed groups continue to rampage freely and with absolute impunity, spreading terror, devastation and chaos. The population is frustrated that members of armed groups responsible for acts of violence have not been neutralized and tried for their crimes. The necessary measures must be taken to investigate those crimes and arrest the perpetrators without further delay. The Ministry of Justice must increase the resources of the country's courts as a matter of priority, ensuring in particular that judges have an effective presence in the towns to which they have been posted and that they hold ordinary court sitting, and assize court sessions on a more regular basis. The authorities should also consider extending the mandate of the Special Criminal Court in order to send a strong signal that current crimes will not go unpunished.

78. During her most recent visit to the Central African Republic, a large number of people expressed concern to the Independent Expert that, during the peace negotiations, requests had been made for amnesty for war crimes, crimes against humanity and genocide. The authorities with which she met, including the diplomatic corps, the Government and the parliament, unanimously stated their determination to fight against impunity and ensure that there would be no possibility of amnesty for war crimes, crimes against humanity or genocide, in accordance with the outcome of the Bangui Forum, the Constitution and the international conventions ratified by the Central African Republic.

79. On 11 May 2017, the country observed the second National Remembrance Day for the victims of the conflicts in the Central African Republic, which was marked by the laying of floral wreaths at a number of memorial sites in Bangui by the Prime Minister and several members of the Government.

80. The Independent Expert welcomes these measures to promote justice and recognition of victims, which should be supplemented by further steps as part of the transitional justice strategy, including the setting up of a truth and reconciliation commission, the preservation of archives and the construction of a memorial.

A. Special Criminal Court

81. Efforts to establish the Special Criminal Court are continuing. In January 2017, the selection panel, made up of United Nations representatives and of the members of the Higher Council of the Judiciary of the Central African Republic, selected Toussaint Muntazini Mukimapa, a military judge from the Democratic Republic of the Congo, for the post of Special Prosecutor of the Special Criminal Court, a choice confirmed by presidential decree on 14 February 2017. Following the appointment of the Prosecutor, who arrived in the Central African Republic on 25 May 2017, two female international investigating judges (from France and Burkina Faso, respectively) were appointed.

82. On 5 May, five national judges were appointed. The Independent Expert was concerned at the lack of women among the national appointees, in particular given that the

[11] See www.hrw.org/fr/report/2017/03/23/pas-de-cours-quand-les-groupes-armes-utilisent-occupent-des-ecoles-republique

Court would be handling cases involving sexual violence. The interministerial decree establishing the committee for the selection of national criminal investigation officers was signed on 23 February 2017. The committee has published the terms of reference for criminal investigation officers and set 2 June 2017 as the deadline for applications, after which shortlisting and interviews will be carried out. The new recruits are expected to take up their posts in July 2017. A security plan has been drawn up by MINUSCA, including a global security strategy for Special Criminal Court premises, as well as for key Court personnel and their residences.

91. Several stages remain before the Court can begin its work, including the renovation of the Court building itself, the resolution of the question of payments to court-appointed lawyers, the recruitment of additional judges, and the recruitment and training of criminal investigation officers.

II. Non-judicial mechanisms and reconciliation

94. Pursuant to the National Recovery and Peacebuilding Plan, on 21 December 2016 the President of the Republic announced the creation of local peace and reconciliation committees. The Independent Expert was able to meet with the members of the committee for the third district of Bangui (PK5), which is working to reconcile the different communities, prevent disputes and actively promote social cohesion, despite lacking the necessary resources. The international partners must support this government initiative, under which 12 local peace and reconciliation committees have been set up to date and a further 14 are planned for the various prefectures, as well as the initiatives of the Interfaith Peace Platform and the actions taken by the traditional chiefs.

95. The Government has taken a number of measures to integrate the Muslim community, including granting Muslim holidays official status. However, more must be done to improve the representation of the Muslim minority in the parliament and in all public bodies.

96. The Government and the international community must also provide specific support to a great many civil society actors working on innovative initiatives in the fields of prevention, reconciliation, social cohesion, and promotion and protection of human rights. The Independent Expert encourages these organizations to continue their efforts and to expand the scope of their activities to areas outside the capital.

97. The role of the National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes against Humanity and All Other Forms of Discrimination is to identify root causes and warning signs and contribute to the strengthening of the reconciliation process by setting up peace forums and other initiatives. The Independent Expert has encouraged the Committee to publicize its work, composition and road map and to raise awareness of violence prevention among all sections of society.

98. The Réseau de journalistes pour les droits de l'homme (Network of Journalists for Human Rights) and its web of regional correspondents and thematic experts organize a large number of innovative journalistic and outreach activities, with the aim of informing the population of progress made in establishing the Special Criminal Court, access to justice and the role of victims in the four pillars of transitional justice, as well as keeping refugees and displaced persons informed of current events in the Central African Republic. These initiatives should receive greater technical, financial and logistical support in order to improve coverage across the country; in particular, there is a need for donations of telecommunications and transport equipment.

99. The report of the Mapping Project, which includes a list of serious violations of human rights and international humanitarian law committed between 1 January 2003 and 31 December 2015, was officially presented on 30 May 2017. The Security Council referred to the project in its resolution 2301 (2016) as being one of the priority tasks of MINUSCA under its human rights promotion and protection mandate. The project was also tasked with listing the existing transitional justice mechanisms, putting forward a strategy for the possible establishment of processes with regard to truth-seeking, reparation and

guarantees of non-recurrence, identifying priority areas for future investigations by the Special Criminal Court and contributing to the preparation of a prosecution strategy for the Special Criminal Court.[16]

90. According to the report of the Mapping Project, security conditions must improve considerably if the transitional justice process is to be implemented peacefully. A staggered approach should be adopted, with prosecutions and the vetting of the security forces being carried out as a matter of priority. Furthermore, displaced persons located outside the capital and refugees should be involved in the transitional justice process. The authorities are encouraged to immediately launch preparatory activities, such as the enhancement of documentation and archives, capacity-building for civil society and victims' organizations, the development of a victim and witness protection programme, and country-wide consultation and awareness-raising on transitional justice.

91. The report also contains several recommendations on non-judicial transitional justice mechanisms, in particular truth-seeking. It recalls that any future truth and reconciliation commission must have a broad mandate allowing it to determine the facts, identify the root causes of conflicts and events, and establish an impartial, historical record. It notes that, although truth commissions can help to institute restorative justice, they should not act as courts.

92. The Independent Expert had already affirmed her support for a truth commission as a key element of the transitional justice strategy. In her previous report, she had recommended that extended, thematic consultations should be held in order to consider issues in greater depth before the formation of the aforementioned commission and to place victims at the centre of the design and implementation of transitional justice mechanisms. The Independent Expert had recalled the importance of ensuring the safety and protection of victims and witnesses, in order to encourage them to testify about the serious violations they suffered or witnessed.

93. The recent political agreement for peace in the Central African Republic, the Sant'Egidio Agreement, provides for the setting up of a truth, justice and reconciliation commission, with a 12-month mandate, which will make recommendations to the President of the Republic on "traditional processes with regard to cases of reparation and pardon, the reintegration of the leaders and officials of politico-military groups, the release of detained combatants and the adoption of laws on national reconciliation".[17]

94. As to the issue of amnesty, the Independent Expert calls on all the actors involved in the peacebuilding efforts to respect the desire of the population of the Central African Republic to see real justice, given that impunity is one of the structural causes of violence in the country. The international community and the Government must remember that any possibility of amnesty for war crimes, crimes against humanity or genocide is out of the question, in accordance with the outcome of the Bangui Forum, the Constitution and the various international conventions ratified. No one should be able to escape truth and justice and all those who know that they have committed reprehensible acts should have the courage to take full responsibility for their actions before the nation and the victims. That is the price they must pay if they wish to be forgiven and to contribute to reconciliation and peace.

C. Judicial and prison administration

95. The judicial system continues to be dysfunctional and to suffer from a lack of qualified staff and material resources. The Independent Expert was informed of the authorities' continued efforts to re-establish courts and a judiciary across the country. In all, 18 out of 30 courts (3 courts of appeal, 24 courts of major jurisdiction (*tribunaux de grandes instances*) and 3 specialized courts) are up and running again and more than 60 judges have been posted to locations outside Bangui. Furthermore, 23 circuit courts have

[16] See https://minusca.unmissions.org/en/human-rights-0.

[17] Sant'Egidio Agreement, transmitted in a letter to the Security Council dated 22 June 2017.

been held in the provinces. As a result of the dire security situation and the lack of detention facilities outside Bangui, the effectiveness of these courts remains to be determined.

96. Many judges have yet to reassume their posts in the field owing to security and logistical issues. For example, the courts have not sat in Bouar for the last three years because of the lack of judges.

97. Following an initial session of the court of assizes in 2015, the first in almost five years, a series of 55 criminal trials was held between 26 August and 26 September 2016, involving cases of murder, rape, looting, conspiracy to murder and illegal possession of weapons.[18] The Independent Expert encourages the judicial authorities to hold such sessions on a regular basis in order to fight against the widespread sense of immunity in the country.

98. The Independent Expert took note of the adoption, on 24 March 2017, of the Military Justice Code, which provides for the prosecution of members of the armed forces for indictable offences they have committed. She calls for the law to be disseminated widely and implemented.

99. MINUSCA provides the judicial authorities with technical assistance, including capacity-building relating to knowledge of the law. The separation of powers constitutes a matter for concern, given that more than 17 per cent of serving judges reportedly also hold political posts.

100. With regard to prison administration, a number of major challenges remain, including the lack of detention facilities outside Bangui and the extremely poor conditions of detention, which are due in particular to a lack of funds for food for detainees and to prison overcrowding. In some locations, such as Bouar, detainees are suffering from malnutrition.

V. Conclusions and recommendations

A. Conclusions

101. **The security situation has worsened dramatically since the previous report and the oral presentation of March 2017 following advances by the armed groups, who currently control 12 out of country's 16 provinces in the south and centre. The Independent Expert notes that, in those areas, the armed groups are killing, looting, burning down houses and assuming sweeping powers, including in the fields of justice administration and tax collection, as the State and MINUSCA watch on, virtually impotent. She has warned of the worsening of the security situation throughout the period and of the slow progress in restoring effective State authority outside Bangui. The current security situation is discouraging State employees from taking up posts in certain regions that are in the hands of armed groups, thus preventing any headway from being made in the establishment of a law-based State.**

102. **The Independent Expert has taken due note of the efforts made by the authorities to implement their road map and the sectoral action plans, as well as the institutional reforms adopted. However, she observes that, without a cessation of hostilities and without the disarmament, demobilization, repatriation and reintegration of the armed groups, it would be completely unrealistic to expect the other urgent measures to promote the rule of law, justice and economic recovery to have any real impact.**

103. **The Independent Expert encourages the MINUSCA peacekeeping force to redouble its efforts to protect civilians threatened by the myriad armed groups committing abuses. Many civil society organizations continue to call for the lifting of**

[18] Human Rights Watch, "Killing Without Consequence", July 2017.

the embargo on the supply of weapons to the Central African Armed Forces, citing by way of justification the inability of MINUSCA to provide effective protection and even going so far as to accuse certain battalions of conspiring with the armed groups. The Independent Expert has already underlined the importance of far-reaching reform of the security sector, of the setting up of a vetting process to ensure that those responsible for serious violations are prevented from re-enlisting in the armed forces and of the establishment of an army that is responsible, national and democratic.

104. The fight against impunity is essential to the resolution of the crisis in the Central African Republic. The population has waited too long for specific measures to re-establish the rule of law. The appointment of the Special Prosecutor of the Special Criminal Court is proof that progress can be made. That achievement must now be built on as a matter of urgency to ensure that the Court becomes operational and to break definitively with the past, which was characterized by a tendency to turn a blind eye to the actions of war criminals and to reward violence.

105. The multiple mediation efforts must include not only the Government and the armed groups, but also women and the Central African political parties. The Independent Expert recalls that discussions on peace and development can bear fruit only if they are inclusive and involve the effective participation of women from all sections of society.

B. Recommendations

106. The Independent Expert reiterates the recommendations contained in her previous report (see A/HRC/33/63, para. 122), which remain pending. She calls on the Government, with the support of the international community:

(a) To continue to participate actively, transparently and with due respect for its human rights obligations in conflict-mediation initiatives in order to achieve an immediate end to hostilities and a lasting peace in a sovereign and united Central African Republic;

(b) To encourage and ensure women's participation in all peace and security negotiation initiatives, in line with Security Council resolution 1325 (2000); and to include the Central African political parties in negotiations on peace, reconciliation and the future of the country;

(c) To reiterate its commitment to refrain from granting amnesty to those responsible for serious crimes under international law, such as war crimes, acts of genocide and crimes against humanity or serious human rights violations, and to reaffirm the right of victims to know the truth about those violations and their right to redress and reparation, in accordance with the will of the Central African people as expressed at the Bangui Forum and in the Constitution of the Republic;

(d) To cooperate with the Special Prosecutor of the Special Criminal Court in order to ensure that perpetrators, instigators of and accomplices to the most serious international crimes, regardless of their status and/or political or religious affiliation or ethnicity, are identified, arrested and put on trial without delay; to provide regular information to the population, civil society organizations and community leaders about the progress made in setting up the Special Criminal Court and to intensify training for all stakeholders, including judicial personnel, lawyers and the Bar;

(e) To strengthen the resources of the country's courts in order to ensure that judges have an effective presence in the towns to which they have been posted and hold ordinary court sittings and assize court sessions on a more regular basis;

(f) To finalize and implement without delay a victim and witness protection strategy so that conditions are in place in which they can testify and obtain justice and reparation in complete safety;

(g) **To expedite the process of restoring State authority by deploying public officials in every prefecture and to ensure that such officials are representative in terms of their ethnicity, religious affiliation and sex;**

(h) **To continue to tackle the major issues at the national level, namely, disarmament, demobilization, reintegration and repatriation, the reform of the security sector and the National Recovery and Peacebuilding Plan, effective action on which requires sustained and concerted resolve and commitment on the part of all State actors, notwithstanding the support of the international community; and to continue to advocate for and take steps to expedite the process of reconstituting trained and equipped national security forces, as part of the reform of the security sector;**

(i) **To promote economic recovery initiatives by approving and launching high; labour-intensive projects across the country and to develop community-level entrepreneurship and projects designed to occupy young people and keep them from becoming involved in conflict;**

(j) **To develop an effective strategy to combat, and provide protection against, the plundering of natural resources, including by securing roads and production areas, and to punish traffickers, where necessary;**

(k) **To strengthen advocacy and action to ensure a humanitarian response that is in line with the urgent needs for assistance and protection of populations affected by fresh outbreaks of violence, in particular displaced persons and refugees; and to create the necessary conditions, in those areas where it can be done, to enable voluntary and sustainable return and reintegration, taking into account the exercise of the right to property and goods;**

(l) **To define urgently a strategy and road map for transitional justice that take account of economic crimes; to obtain and disseminate the report of the Mapping Project, to launch preparatory activities for possible transitional justice mechanisms and to set up the technical committee responsible for establishing a truth and reconciliation commission;**

(m) **To support civil society actors working for peaceful coexistence, conflict prevention and resolution, and human rights; to evaluate and build capacity and resources for prevention and peaceful resolution of conflicts through traditional mechanisms; and to support local peace and reconciliation committees and replicate them within the country;**

(n) **To establish the new National Commission on Human Rights and Fundamental Freedoms as soon as possible, to provide it with the necessary resources and to ensure its independence;**

(o) **To strengthen initiatives to protect children and, in particular, initiatives to benefit young people removed from the armed groups;**

(p) **To take urgent steps to ensure that persons with disabilities are protected and have access to basic services, help and support;**

(q) **To operationalize the joint rapid response unit to combat sexual violence against women and children as soon as possible; and to support local health dispensaries by pursuing a policy of access to essential care and by equipping those centres.**

107. **Addressing the armed groups, the Independent Expert:**

(a) **Urges them to cease immediately all hostilities and attacks against civilians, to respect the peace agreements that they themselves have signed and to respect the rights of civilian populations, in particular the rights to life, security and physical integrity. Sexual violence is a serious human rights violation, and every rape committed during or in connection with an armed conflict constitutes a war crime that must not go unpunished;**

(b) Urges them to respect peacekeeping forces and the staff and property of humanitarian organizations and to allow rapid channelling of humanitarian aid. Targeted attacks on humanitarian staff and resources may be considered war crimes;

(c) Recommends that they immediately stop recruiting child soldiers and free all those who are still in their ranks.

108. **The Independent Expert recommends that MINUSCA:**

(a) Continue to respond firmly to any attempt to plunge the Central African Republic back into a new chapter of the conflict; continue to advocate for its military forces, in particular its special forces, to be strengthened and review its strategy for protecting civilians in the light of the increase in the number of areas where violence occurs; deploy its resources in sensitive areas and in areas to which the armed groups could spread; assist the national authorities in taking steps to arrest those principally responsible for violations of international humanitarian law and human rights;

(b) Strengthen its good offices and political support for efforts to achieve a ceasefire, a political agreement that respects human rights and a reduction in the influence of the armed groups through various forms of mediation and through programmes on disarmament, demobilization and reintegration and the reform of the security sector;

(c) Strengthen the activities of the civilian components of MINUSCA in the area of preventing violence with a view to providing preventative protection for civilians, with a particular focus on vulnerable populations; draw up joint plans of action on warning mechanisms and in the area of capacity-building with the aim of supporting the restoration of the rule of law; increase its support for national and local actors working to build social cohesion through its programme to finance quick-impact projects and other development programmes;

(d) Make every effort to enable the Special Criminal Court to begin its work promptly;

(e) Build on institutional progress in the area of human rights by strengthening the capacity of civil society, the National Commission on Human Rights and Fundamental Freedoms and the National Committee for the Prevention and Punishment of the Crime of Genocide, War Crimes, Crimes against Humanity and All Other Forms of Discrimination by providing training in reporting and by making meetings and joint monitoring, prevention and protection activities sustainable.

109. **Addressing the international community, the Independent Expert:**

(a) Welcomes the efforts already made and encourages renewed vigilance in the face of fresh outbreaks of violence and the risks of increasing destabilization; calls on all stakeholders to strive to achieve an end to hostilities and enable priority programmes under the National Recovery and Peacebuilding Plan to be implemented;

(b) Encourages it to continue to support the Special Criminal Court in the long term;

(c) Urges it to mobilize to avert the impending humanitarian crisis by financing the Humanitarian Response Plan 2017-2018;

(d) Recommends that it strengthen its commitment to the negotiation efforts between the Government and the armed groups initiated by multilateral organizations, the African Union and the group of friends of the Central African Republic to promote peace while respecting the values emerging from the Bangui Forum and enshrined in the Constitution, in particular the need for justice; encourages it to support the involvement of women in negotiations, in line with Security Council resolution 1325 (2000);

(e) Encourages it to support the reform of the security sector by training and equipping national security forces that can protect all sections of the Central African population;

(f) Calls on it to continue to implement measures intended to prevent abuse and to put an end once and for all to the scourge of sexual exploitation and violence by international forces, to conduct relevant inquiries and to bring those responsible to justice;

(g) Recommends that it facilitate the organization of a subregional conference on matters of common interest, such as transhumance, transboundary crime, subregional security, and refugees and displaced persons, which could be supported by the African Union and the United Nations;

(h) Recommends that it remain seized of the issue of the human rights situation in the Central African Republic.

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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on cooperation with Georgia

Summary

In its resolution 34/37, the Human Rights Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance through his presence in Tbilisi, and to present a written report on developments relating to and the implementation of the resolution at its thirty-sixth session.

The present report describes technical assistance efforts by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to strengthen the promotion and protection of human rights in Georgia, while noting the challenges that need to be addressed through concrete measures.

Another key element of the resolution was the Council's call for immediate access for OHCHR and international and regional human rights mechanisms to Abkhazia, Georgia, and to the Tskhinvali region/South Ossetia, Georgia. No such access has been granted to OHCHR or to United Nations human rights mechanisms.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 34/37, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance through the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Tbilisi, namely the Senior Human Rights Adviser. The Council also requested OHCHR to present an oral update[1] on the implementation of its resolution 34/37, at its thirty-fifth session, and a written report on related developments, at its thirty-sixth session. In resolution 34/37, the Council also called for immediate access for OHCHR and international and regional human rights mechanisms to Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia.

2. The present report describes the technical assistance provided by OHCHR in Georgia and reviews the main human rights developments pursuant to resolution 34/37.

3. It draws on information provided by the Government of Georgia; the Office of the Public Defender of Georgia (an "A" status national human rights institution); international and regional organizations, as well as local non-governmental organizations; and credible open source documents.[2]

4. OHCHR exercised due diligence to corroborate, to the extent possible, the validity of the information received, within the constraints of limited resources and the lack of access to Abkhazia and South Ossetia. The present report therefore does not provide a comprehensive account of the human rights situation, but rather highlights some of the key human rights issues and developments on the basis of the information received by OHCHR.

5. OHCHR reached out to various stakeholders, and posted a call for submissions pursuant to resolution 34/37 on its website to seek contributions for the oral update and the report of the High Commissioner, including from Member States, United Nations entities, the Office of the Public Defender of Georgia, and intergovernmental and non-governmental organizations.

II. Technical assistance and human rights developments

6. In 2007, an OHCHR Senior Human Rights Adviser was deployed to Tbilisi, who covers the South Caucasus region. He is supported by national staff members in Georgia and Azerbaijan. In Georgia, he has been advising and providing technical assistance to the Government, Parliament, the judiciary, the Office of the Public Defender, civil society organizations, the United Nations country team and the donor community, including to address gaps, build on progress, and support compliance with international human rights standards, and to assist, among other things, in the implementation of the National Human Rights Strategy and the related plan of action.

A. Main areas of technical cooperation

7. Following the parliamentary elections of October 2012, human rights issues became more prominent on the agenda of the executive and legislative branches of the Government of Georgia.

8. A report entitled *Georgia in Transition*, completed in September 2013, by Thomas Hammarberg, the European Union Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, was used as the baseline study for the development of the

[1] The oral update was presented on 21 June 2017. An archived webcast of the oral update is available from http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/35th-session/watch/item10-general-debate-32nd-meeting-35th-regular-session-human-rights-council/5478270539001.

[2] With a cut-off date of 1 June 2017.

National Strategy for the Protection of Human Rights in Georgia, 2014-2020, which was adopted by the Parliament in 2014.

9. The stated aim of the National Strategy is to establish "institutional democracy" and to ensure that actions of duty bearers are geared towards the realization of the human rights of the population. To support the National Strategy, the Government elaborated national human rights action plans for 2014-2015 and for 2016-2017. In April 2017, the Government published and disseminated a report on progress in the implementation of the National Strategy.[3]

10. A National Human Rights Action Plan Coordinating Inter-Agency Council, chaired by the Prime Minister, was established in 2014 to oversee the implementation of the National Human Rights Action Plan, but it has not met since mid-2015. Since 2016, the Parliament has been increasing its engagement in the human rights sphere by enhancing its oversight of the implementation by the executive branch of recommendations of international and regional human rights mechanisms and of the national human rights institution.

11. Along with other United Nations entities, OHCHR provided assistance to the Government with the elaboration and implementation of the National Human Rights Action Plan, including in the framework of a programme funded by the European Union. This included capacity-building for legal professionals, police officers, university students and youth groups, as well as for civil servants, including representatives of local self-government bodies. Most of the OHCHR activities were planned in close consultation with the National Human Rights Action Plan secretariat and were conducted in response to requests by, and in cooperation with, the Government. The present report highlights key human rights issues which OHCHR activities have aimed at addressing.

I. Administration of justice

12. OHCHR assistance in the justice sector focused on building the awareness and capacity of new judges to apply international human rights standards. In close cooperation with the High School of Justice, OHCHR trained judges, with an emphasis on the rights to freedom of expression and freedom of religion or belief, the right to private and family life, and access to justice for persons with disabilities. To promote the right to a fair trial and the principle of equality of arms, OHCHR developed several studies at the request of the Chief Justice of the Supreme Court. Within broader assistance efforts aimed at promoting equality of arms, OHCHR developed sustained cooperation with the Georgian Bar Association, and provided training that is now included in the list of professional courses for practising lawyers. OHCHR assistance in the justice sector has been grounded on relevant recommendations by United Nations human rights mechanisms.

13. The progress report on implementation of the National Strategy noted "significant scepticism in society as to the independence and impartiality of the judiciary".[4] Contributing to the growth of this perception was the approach of the judiciary to the case of disputed ownership of the Rustavi 2 television station, the country's most watched channel, which was generally critical of the Government. On 3 March 2017, the European Court of Human Rights issued, and on 8 March extended, an interim measure suspending until further notice the ruling issued by the Supreme Court of Georgia on 2 March to transfer the ownership to a previous owner. The Government of Georgia announced that it would implement that interim measure.

[3] "Report on progress on the implementation of the National Strategy for the Protection of Human Rights in Georgia, 2014-2020, and recommendations as to future approaches", prepared by an international human rights expert and available from http://www.ge.undp.org/images/files/426/ReportonImplementationofHumanRightsStrategyENGEWMIUNDP.PDF.

[4] Ibid., p. 16.

2. Combating torture and ill-treatment

14. At the end of her visit to Georgia in May 2014, the former High Commissioner, Navi Pillay, recommended the creation of an "independent investigative body to look into allegations of abuse by the police and other law enforcement agencies".[1] In August 2014, the Human Rights Committee, in its concluding observations on the fourth periodic report of Georgia, recommended that "the State party should pursue its plans to establish an independent and impartial body to investigate allegations of abuse by police and other law enforcement officers, including torture and inhuman or degrading treatment."[2] Through the National Human Rights Action Plan for 2016-2017, the Government committed to the implementation of that recommendation and options were developed by independent experts, including OHCHR, and were presented to the Government in March 2017.

15. In June 2017, draft legislation was elaborated by the Government to create a special department within the Office of the Chief Prosecutor to examine allegations of torture and ill-treatment. This draft legislation is included in the autumn 2017 agenda of the Parliament for discussion. OHCHR stands ready to continue assisting the Government to establish a credible independent mechanism that would demonstrate the commitment of Georgia to preventing and combating torture and ill-treatment.

16. Various sources cited a recent trend of individuals being approached by the police with an "invitation for a conversation" and being de facto apprehended without any procedural guarantees. Reportedly, individuals affected, unlike those who are brought for questioning under regular procedures, were neither registered as having entered a police station nor accompanied by, or granted, a lawyer and a medical check, and were thus deprived of the safeguards against potential ill-treatment. Such a practice should be urgently terminated and guarantees against ill-treatment should be enjoyed effectively by every individual who is de facto deprived of liberty. In 2017, OHCHR included awareness-raising discussions on the unlawful nature of such practices in training programmes for police officers and legal professionals.

3. Protecting the right to privacy

17. In February 2017, at the request of the Parliamentary Committee on Legal Issues, OHCHR provided comments on a package of amendments to laws governing surveillance activities of law enforcement agencies. These comments were intended to bring legislation into line with the applicable international standards and with the April 2016 ruling of the Constitutional Court that bans unrestricted access by security agencies to monitor communications conducted over telecommunication networks. Many recommendations by OHCHR were integrated into the amended legislation, which was endorsed by the Parliament on 1 March 2017. However, a number of OHCHR recommendations aimed at ensuring the independence of the leadership of the agency that is tasked with surveillance were rejected. On 20 March 2017, the President of Georgia vetoed the legislation, citing concerns that the Operative-Technical Agency created by the new legislation and mandated to conduct surveillance activities would lack independence, and arguing that the costs of surveillance would be borne by private communications operators.

18. On 22 March 2017, the Parliament overrode the President's veto of the proposed amendments without taking his concerns into account. The progress report on the implementation of the National Strategy recommended that the legislation be revisited in the light of "the judgment of the Constitutional Court" and of "the principles set out in the National Strategy".[3] OHCHR stands ready to continue to assist all stakeholders to ensure that legislation and practices in this area meet international human rights standards.

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[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624.

[2] See CCPR/C/GEO/CO/4, para. 12.

[3] Report on progress in the implementation of the National Strategy, p. 24.

4. Combating discrimination

19. Combating discrimination is a centrepiece of all ODIHR capacity-building activities, due to the many challenges in this area. ODIHR supports the operationalization of the Government's commitment to building an inclusive society as outlined in the National Human Rights Strategy and the national human rights action plans.

20. In May 2014, Parliament adopted the Law on the Elimination of All Forms of Discrimination, with an extensive list of prohibited grounds for possible discrimination. While earlier proposals had envisaged an "equality inspector" to oversee the implementation of the law, that role was ultimately assigned to the Office of the Public Defender, which lacks powers of enforcement and can only issue recommendations.

21. On 17 May 2017, at the invitation of the Government of Georgia, ODIHR observed a one-hour rally held by the lesbian, gay, bisexual, transgender and intersex community on International Day against Homophobia, Transphobia and Biphobia. The gathering took place before the building of the Administration of the Government of Georgia, nearby Tbilisi's main central avenue, under heavy police protection. The Government and the police are to be commended for making this rally possible and providing the necessary security. The event required heavy protection, due to credible threats of violence by some individuals observing the "Family Day" announced by the Georgian Orthodox Church on that same day. Observers of the "Family Day" were granted concentrated and exclusive use of Tbilisi's central avenue for events they had organized for that day, thus impeding any further International Day against Homophobia, Transphobia and Biphobia activities in the area. Such an approach illustrates persisting discriminatory attitudes towards lesbian, gay, bisexual, transgender and intersex persons and their rights.[4]

22. Discrimination on religious grounds is one of the issues that ODIHR regularly addresses in its capacity-building activities. Since 2014, the Georgian State, in addition to funding the predominant Georgian Orthodox Church, has also provided funding to the Roman Catholic, Armenian Apostolic, Muslim and Jewish communities. For several years, in its regular reporting, the Office of the Public Defender noted that the Muslim community had been facing difficulties in carrying out religious services. A recent example is the refusal of the mayor of Batumi (the second-largest city), in May 2017, to issue a permit to the Muslim community to build a new mosque, notwithstanding that the existing mosque is too small, forcing many Muslims to pray on the open air.[5] According to the information provided by the Government of Georgia, a reconstruction project for the existing mosque has been developed. A new plot has been allocated to expand the mosque and the Government will bear the cost of the project.

5. Gender equality and combating domestic violence

23. ODIHR contributed to advocacy by the United Nations country team on gender equality and combating domestic violence. In 2016, the Office of the Public Defender reported 13 cases of femicide, and national non-governmental organizations reported a worrying trend of courts issuing pretrial measures and lenient sentences in cases of domestic and gender-based violence. About 30 per cent of those convicted of domestic crimes and crimes of violence against women received a prison term, while the others were either subjected to a conditional sentence or sentenced to community service. In 2017, ODIHR started training legal professionals on the application of law in cases of domestic and gender-based violence.

24. Joint advocacy by the United Nations country team and other international actors resulted in an amendment to the Civil Code that does not allow the State to register marriages of persons below the age of 18 years, so as to end the harmful practice of child

[4] In 2019, the European Court of Human Rights ruled that Georgia had failed to protect the rights of lesbian, gay, bisexual, transgender and intersex individuals to freedom of peaceful assembly. A similar case is pending with regard to events that took place in 2013.

[5] See http://ombudsman.ge/uploads/other/4/4442.pdf, p. 50.

marriages. The amendment came into effect on 1 January 2017, and is a welcome development. It is now critical to ensure the stringent enforcement of this law.

25. The United Nations country team and other international actors in Georgia have also been advocating for greater political participation by women. Only two out of 18 Cabinet ministers and 24 out of 150 parliamentarians are women. The Committee on the Elimination of Discrimination against Women, in its 2014 concluding observations, recommended that Georgia "adopt temporary special measures, including statutory quotas, in accordance with article 4 (1) of the Convention and in line with the Committee's general recommendation No. 25 on the subject, as part of a necessary strategy to accelerate the achievement of substantive equality of women and men".[*]

II. Access to Abkhazia and South Ossetia

26. On 11 April 2017, pursuant to Human Rights Council resolution 34/37, OHCHR sent letters to the authorities in control in Abkhazia and in South Ossetia, seeking unfettered access to the population concerned to assess the human rights situation, taking into account long-standing conflicting allegations of human rights violations.

27. OHCHR received a response on 19 April 2017 from the authorities in control in South Ossetia, which invoked status-related issues, thus preventing OHCHR from negotiating access under resolution 34/37.

28. On 22 April 2017, OHCHR received a response from the authorities in control in Abkhazia, indicating that a visit by OHCHR would not be possible unless an Abkhaz delegation was allowed to present its position concerning the human rights situation before the Human Rights Council.

29. Lack of access to Abkhazia and South Ossetia raises legitimate questions and concerns about the human rights situation of the population living there.

30. In his past five reports to the General Assembly on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia,[**] the Secretary-General called for OHCHR to be granted access to Abkhazia and South Ossetia.

31. Despite repeated requests since 2011, access to Abkhazia and South Ossetia has not been granted for proposed OHCHR technical human rights missions, nor for the former High Commissioner in the context of her visit to Georgia in May 2014, nor for special procedures of the Human Rights Council (for instance the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[***] the Special Rapporteur on the human rights of internally displaced persons, and the Special Rapporteur on the sale of children, child prostitution and child pornography).[****]

32. The Government of Georgia, in its written submission to OHCHR, noted that "since 2012, a delegation preparing the Consolidated Report of the Secretary-General of the Council of Europe on Georgia has been denied access to Abkhazia and South Ossetia. In January 2014 and November 2015, the Commissioner for Human Rights of the Council of Europe was not allowed to visit the regions." The Government of Georgia also informed OHCHR that in 2015 and 2016, the High Commissioner on National Minorities, of the Organization for Security and Cooperation in Europe, was denied entry to Abkhazia.

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[*] See CEDAW/C/GEO/CO/4-5, para. 17, and Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures. The general recommendation addresses cases where the long-term effects of discrimination have seriously disadvantaged women, which may require measures that give women not just formally equal treatment to men, but preferential treatment, in order to create actual equality for women.

[**] A/67/305, A/68/340, A/69/359, A/70/334 and A/71/359.

[***] See A/HRC/31/57/Add.3, para. 4.

[****] See A/HRC/34/55/Add.1, para. 6.

33. OHCHR has been informed that an independent and comprehensive assessment of the human rights situation in Abkhazia was finalized in January 2017 following several field visits by independent expert Thomas Hammarberg, at the request of the European Union Special Representative for the South Caucasus and the Crisis in Georgia. At the time of the present report being finalized, that assessment had not been made public.

34. The loss of effective control by the central Government of Georgia over Abkhazia and South Ossetia and the persistent denial of access by the authorities in control of those regions have been cited by United Nations treaty bodies, namely the Committee on the Rights of the Child,[14] the Committee on the Elimination of Racial Discrimination[15] and the Committee on the Elimination of Discrimination against Women,[16] as obstacles to the implementation of the relevant treaties.

35. Since December 2016, the authorities in control in Abkhazia and the Government of Georgia have allowed the Office of the United Nations High Commissioner for Refugees (UNHCR) to establish a shuttle bus, free of charge, to transport the most vulnerable of the affected population across the Inguri bridge, which is the main crossing point between Abkhazia and the Tbilisi-controlled territory. This has reportedly significantly facilitated crossings for medical care and family visits and for people to buy goods. In addition, in late 2016, UNHCR was able to visit the upper Kodori Valley — for the first time since 2009 — which allowed it to assess the humanitarian situation in that isolated region and to formulate recommendations for assistance.

36. There has been no recent independent assessment of the human rights situation in South Ossetia. Since the conflict in August 2008, United Nations agencies, funds and programmes have had no operational access to the area. Only UNHCR was able to conduct a humanitarian assessment mission, in August 2016, for the first time since the 2008 conflict. It was thus able to assess the humanitarian needs of the population of concern to UNHCR and to get initial information on returns to Akhalgori, which is predominantly inhabited by ethnic Georgians.

37. With a view to ensuring better support for the enjoyment of human rights, as well as predictable and sustainable access and service delivery by humanitarian and development actors in Abkhazia and South Ossetia, it would be important to review, and if necessary modify, the law on occupied territories, which Georgia adopted in 2008 and amended in 2013. For that purpose, due consideration should be given to the comments and recommendations issued in 2013 by the European Commission for Democracy through Law (Venice Commission),[17] and those of the Office of the Public Defender[18] addressed to the Government of Georgia in 2017.

38. According to the Government of Georgia, the "law on the order of entry into and exit from Abkhazia", of January 2016, imposed new restrictive provisions of entry into, exit from and movement within Abkhazia, thus further restricting the already limited access and activities of international governmental and non-governmental organizations in the area.

C. Situation of internally displaced persons and refugees

39. Resolution 34/37 expresses concerns that "internally displaced persons and refugees continue to be deprived of the right to return to their homes in a safe and dignified manner". Since 2009, the General Assembly has adopted an annual resolution on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, following consideration of the annual report of the

[14] See CRC/C/GEO/CO/4, para. 4.
[15] See CERD/C/GEO/CO/6-8, para. 3.
[16] See CEDAW/C/GEO/CO/4-5, para. 12.
[17] See Venice Commission opinion No. 744/2013 on the 2013 draft amendments to the law on the occupied territories of Georgia (Strasbourg, 9 December 2013).
[18] See the special report of the Public Defender of Georgia entitled "Analysis and recommendations regarding the Law of Georgia on Occupied Territories" (2017).

Secretary-General on that topic. Therefore, the present report does not address that subject in further detail.

D. Human rights framework and key issues

40. In its resolution 48/141, the General Assembly mandates the High Commissioner for Human Rights "to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights". Regardless of questions related to status, it is vital to focus on the underlying human rights issues and address any conduct that affects the human rights of all individuals concerned. While some entities are not a party to international human rights treaties, it has been stressed in various reports that these entities are obliged to respect international human rights law when they exercise significant control over territory and population and have an identifiable political structure.[37] Accordingly, the authorities in control in Abkhazia and South Ossetia are responsible to uphold the fundamental freedoms and human rights of all people living under their control.

41. In its resolution 34/37, the General Assembly expresses "serious concern at the human rights and humanitarian situation in those regions of Georgia", such as "reported kidnappings, arbitrary detention, interference with property rights, restrictions on access to education in one's native language, free movement and residence, as well as continued discrimination on the grounds of ethnic origin in both regions".

42. The absence of a political solution continues to undermine the protection of human rights in Abkhazia and South Ossetia. Pressing human rights issues are closely interlinked, while decisions and practices that are often driven by political divergence affect a range of human rights and freedoms.

43. Restrictions to freedom of movement on the administrative boundary lines with Abkhazia and South Ossetia remain among major concerns, and considerably hamper the enjoyment of other rights and constrain confidence-building measures across the dividing lines. Measures such as the closure of crossing points, the so-called "borderization" process, and procedures applicable to access to and management of dividing lines and adjacent areas are compounded by limited access to documents necessary to exercise civil, cultural, economic, political and social rights without discrimination.

44. Truth and accountability for past and more recent human rights violations, including legacies of the 2008 conflict, remain to be addressed, particularly on the question of missing persons, the rights of displaced people, issues related to access to and protection of cultural heritage, and the right to education as a means to preserve identity, foster trust among communities and build sustainable peace.

1. Truth and accountability

45. The International Criminal Court is currently investigating alleged crimes committed in the context of an international armed conflict between 1 July and 10 October 2008, in and around South Ossetia, which include crimes against humanity, namely murder, forcible transfer of population and persecution, and war crimes, namely attacks against the civilian population, wilful killing, intentionally directing attacks against peacekeepers, destruction of property and pillaging.[38]

2. The right to life, and enforced disappearances

46. Prompt, impartial and comprehensive investigations into violations of the right to life are essential. Such grave incidents have been rare in the past few years, but it is critical to ensure that there is no impunity, regardless of where they took place.

[37] See E/CN.4/2005/7, para. 76; A/HRC/2/7, para. 19; A/HRC/8/17, para. 9; A/HRC/10/22, para. 22; A/HRC/12/37, footnote 7; and A/HRC/25/21, para. 11.

[38] See https://www.icc-cpi.int/georgia.

47. It is of great concern that an investigation into the killing of an ethnic Georgian civilian man at the Abkhaz Administrative Boundary Line, Khurcha crossing point, on 19 May 2016, has been suspended.[31] According to the information received, the authorities in control in Abkhazia have dropped charges against the alleged perpetrator. In its submission to OHCHR, the Office of the Public Defender observed that this killing, as well as the disappearance of an individual from the village of Kordi, Gori municipality, on 26 May 2016, demonstrate the vulnerability of the communities living along the Administrative Boundary Line.

3. Missing persons

48. The issue of missing persons entails the right of family members to know the fate of missing relatives, including their whereabouts, or, if dead, the circumstances and cause of their death. It also carries the obligation to conduct effective investigations into the circumstances surrounding an enforced disappearance. Ensuring accountability is critical, both as a preventive measure and as a measure of redress.

49. According to the International Committee of the Red Cross,[32] over 2,300 persons remain unaccounted for in connection with the conflicts of the 1990s, and 42 as a result of the 2008 conflict.[33]

50. The International Committee of the Red Cross continues to work on the issue of missing persons, having established two coordination mechanisms in 2010 to clarify the fate of persons missing in relation to the armed conflicts of the 1990s and August 2008 and their aftermath.[34] From 2010 to 2016, 249 sets of human remains were thus recovered.[35]

4. Freedom of movement

51. Freedom of movement is enshrined in article 13 of the Universal Declaration of Human Rights. Restrictions on freedom of movement, including for reasons of security, must be strictly necessary for that purpose, proportionate and non-discriminatory. Freedom of movement is also a prerequisite for the enjoyment of civil, cultural, economic, political and social rights. The exercise of some rights, such as the rights to work, health and education, depends to a large extent on the ability to move freely and to choose one's residence. Thus, restrictions on freedom of movement can lead to severe limitations on various other human rights.

5. Crossing points

52. The closure of two crossing points along the Abkhaz Administrative Boundary Line (i.e. Otobaia-Orsantia and Nabakevi-Khurcha), on 6 March 2017, undermines efforts to uphold freedom of movement as a human right and an important confidence-building measure.

53. On 26 January 2017, in reaction to the announcement of the upcoming closure of these crossing points, the United Nations country team in Georgia underlined that the population affected would find it more difficult to access basic services, such as health care and education, and to participate in economic activities and family and social events across

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[31] The victim was shot by an armed man who had arrived from Abkhazia and who retreated to that territory after perpetrating the killing.

[32] International Committee of the Red Cross (ICRC) press release, 3 March 2017, available from https://www.icrc.org/en/document/georgia-abkhazia-more-work-being-done-solve-cases-missing-people.

[33] ICRC press release, 16 December 2016, available from https://www.icrc.org/en/document/georgia-south-ossetia-tenth-meeting-held-seek-ways-forward-cases-missing-persons-conflicts.

[34] ICRC press release, 26 April 2010, available from https://www.icrc.org/en/document/georgia-missing-persons-clarifying-the-fate.

[35] ICRC press release, 4 May 2017, available from https://www.icrc.org/en/document/georgia-abkhazia-south-ossetia-more-30-graves-may-be-excavated-search-missing-people.

the dividing line.[26] On 27 February 2017, in response to questions on the announced closing of crossing points along the Inguri River, the Secretary-General's spokesperson underscored that this would be detrimental to the freedom of movement and overall well-being of the local population, including schoolchildren, on both sides of the Administrative Boundary Line, especially for people living in Gali district.

54. According to other various sources, the reduction in the number of crossing points is likely to affect the right to education of many children, as attending school in their native language on Tbilisi-controlled territory is one of the main reasons why they cross the Administrative Boundary Line, travelling by bus for 15 to 20 kilometres in each direction and being dependent on strict time schedules.

55. Some sources also highlighted the risk that cases of deprivation of liberty by Russian Federation border guards may increase, especially at "unauthorized" crossing points. The closure of crossing points also reportedly limits opportunities to carry goods, both for personal consumption and for trade, and has negatively affected the enjoyment of social and economic rights, especially those of Gali residents. The crossing points in question used to be used for non-emergency medical transfers, which are no longer possible.

56. According to the Government of Georgia, at the end of 2016, the so-called border zone in the "lower zone" of Gali district was expanded, further restricting freedom of movement for the residents of the villages located within that zone and for those living in the rest of Abkhazia.

6. So-called "borderization"

57. In May 2014, following her mission to Georgia, the former High Commissioner, Ms. Pillay, noted that since May 2013, razor wire and other forms of fencing, as well as additional watchtowers and other monitoring equipment, had been set up by Russian Federation border guards along a stretch of the Administrative Boundary Line with South Ossetia. She stressed that that practice further impeded the right to freedom of movement for internally displaced persons, and the enjoyment of the rights to property, water, health, education and access to religious and cultural sites. She underscored that the impact on local villagers on both sides of the wire was devastating.

58. According to the Government of Georgia, as of 15 May 2017 the total length of razor wire, barbed wire fences and other artificial obstacles reached nearly 52 kilometres along the Administrative Boundary Line with South Ossetia, and 48 kilometres along the Administrative Boundary Line with Abkhazia.

59. Reportedly, these measures have shifted the line of control deeper into Georgian-controlled territory and have created tensions in villages surrounding the Administrative Boundary Line.

60. According to various sources, the installation of razor wire, barbed wire fences and other artificial obstacles along the administrative boundary lines with Abkhazia and South Ossetia considerably obstructs freedom of movement and economic activities, and exacerbates the perception of insecurity. In some instances, it physically divides families; it also prevents access to agricultural land and water supplies, as well as to churches and cemeteries.

7. Deprivation of liberty and allegations of torture and ill-treatment

61. According to the Universal Declaration of Human Rights, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (art. 5) and "no one shall be subjected to arbitrary arrest, detention or exile" (art. 9). All related allegations should be promptly addressed and properly documented.

62. OHCHR has been receiving allegations of deprivation of liberty of ethnic Georgians in connection with crossing the Administrative Boundary Line. According to recent reports,

[26] See www.ungeorgia.ge/eng/news_center/media_releases?info_id=507#.WR1X3-uGPcs.

such detention may last for several days before people are freed upon payment of substantial fines, often simply for attempting to visit their property on the other side of the wire to harvest their crops — which is the sole source of income for people affected.

63. According to the Government of Georgia, acts "which amount to torture and ill-treatment are regular" and there has been information on inadequate conditions in so-called "detention centres" in Abkhazia and South Ossetia. Also, according to the Government of Georgia, people are regularly arrested and detained by Russian Federation border guards for so-called "illegal border crossing" along the administrative boundary lines. According to data from the State Security Service of Georgia, between 2008 and December 2016, 1,788 people were detained by Russian Federation border guards for so-called "illegal border crossing" along the Administrative Boundary Line with Abkhazia, and 987 people were detained along the Administrative Boundary Line with South Ossetia; between 1 January 2016 and 12 December 2016, 190 people were detained along the Administrative Boundary Line with Abkhazia, and 132 people were detained along the Administrative Boundary Line with South Ossetia. According to the State Security Service of Georgia, the above-mentioned cases relating to the Administrative Boundary Line with South Ossetia represent only 15-20 per cent of the actual number of cases occurring along that Administrative Boundary Line.

64. Citing media sources, the Office of the Public Defender reported that, according to data released by the Border Service of the Federal Security Service of the Russian Federation, there were about 14,000 cases of "detention" on the Abkhaz Administrative Boundary Line between 2009 and 2016. Accounts collected by the Office of the Public Defender from individuals who had been detained by Russian Federation border guards between July 2014 and November 2016 indicate poor conditions in basements of the Russian Federation military bases, where they would reportedly be held for several hours to a few days. The information concerned cases in the Khurcha region and the villages of Khurcha and Nabakevi, for instance.

65. Cases of long-term deprivation of liberty in Abkhazia and South Ossetia were cited by various sources. The Office of the Public Defender reported that detainees, including children, would not be provided with water and food for several hours, and that dozens were placed in the same room regardless of their sex and age. Children were reportedly deprived of liberty mainly to secure the payment of fines.[27]

8. Right to health

66. It is provided in the Universal Declaration of Human Rights that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services" (art. 25).

67. The right to the highest attainable standard of health (referred to here as the "right to health") includes the requirement for health facilities, goods and services to be available in sufficient quantity, to be accessible to all without discrimination and to be within safe and reasonable physical reach. In addition, they should be of good quality, with skilled medical personnel, and be equipped with unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[28]

68. According to the Office of the Public Defender and other sources, access to medical services is one of the most problematic issues for conflict-affected communities. Patients often have to take a bypass to cross the Administrative Boundary Line to seek medical care

[27] For more information on specific cases, see the "Special report of the Public Defender of Georgia on the rights of women and children in conflict-affected regions, review of 2014-2016", pp. 18 and 19, available from www.ombudsman.ge/uploads/other/4/4319.pdf, and "The human rights situation of the conflict-affected population in Georgia" (2015), available from www.ombudsman.ge/uploads/other/3/3768.pdf.

[28] See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

on Georgian-controlled territory — travelling in ordinary motor cars which are not suitable for the transportation of patients in critical condition.

69. According to the Office of the Public Defender, medical infrastructure is underdeveloped and health services are poor in both Abkhazia and South Ossetia. The Office of the Public Defender and other sources reported that medical facilities in Abkhazia were inadequate, due to the lack of qualified specialists, poor equipment and the condition of health-care facilities, especially in Gali district. The low level of qualification of medical personnel and high costs of medical services in Abkhazia and South Ossetia reportedly lead many to seek treatment for serious health conditions outside of these territories, despite the difficulties and risks related to movement across the Administrative Boundary Line. Due to the absence of facilities for children in need of intensive care in Abkhazia, children need to be transported for hours all the way to the city of Kutaisi, thus considerably delaying the provision of medical services when they are urgently required.

70. According to the Office of the Public Defender, several hospitals in South Ossetia have been rehabilitated and refurbished but are mainly used for primary medical purposes by local communities, due to the lack of qualified medical personnel. As the Administrative Boundary Line with South Ossetia is closed (except for in Akhalgori district), patients requiring emergency care are transferred to medical facilities on Georgian-controlled territory, by the International Committee of the Red Cross. The Office of the Public Defender was informed of several fatalities allegedly caused by delayed consent to people moving out of the territory by the Tskhinvali hospital management and the authorities in control.

9. Right to education

71. Under article 26 of the Universal Declaration of Human Rights, everyone has the right to education, which should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The right to education is essential to the full enjoyment of a wide array of other rights.

72. It is important to create adequate opportunities for children to learn their mother tongue or to receive instruction in their mother tongue, particularly at the preschool and primary school levels. Children should be given adequate opportunities to learn their mother tongue or to learn through the medium of the mother tongue, alternatives which should not be mutually exclusive. Specific forms of such opportunities should be chosen in consultation with the population affected, taking into account their freely expressed wishes. Curricula should adequately reflect the diversity and plurality of a society.

73. The Office of the Public Defender noted that obstacles to the right to education in one's native language and to access to quality education in general remained a serious issue for communities in Gali district that identify as ethnically Georgian.[7] The Council of Europe noted that Russian had replaced Georgian as the language of instruction in schools in Gali, thus restricting access to the native Georgian language. The Government of Georgia cited restrictions imposed on the education of ethnic Georgian children in their native language in Abkhazia. For instance, out of 31 schools in Gali, 11 schools — all located in the so-called "lower zone" — enjoyed the status of Georgian schools, with Georgian being the language of instruction until the end of the 2014/15 academic year.

74. According to the Office of the Public Defender, teaching in Georgian will be terminated in Gali district schools by 2021 and fully replaced with teaching in Russian. The 2016/17 academic year started in line with these changes, which, according to the Government of Georgia, are aimed at the gradual replacement of the Georgian curriculum with the Russian Federation curriculum for all grades in the 11 schools in the "lower zone" of Gali district.

[7] For more information, see the special report of the Public Defender of Georgia entitled "The right to education in the Gali district: new developments and challenges in the academic year of 2015-2016", available from www.ombudsman.ge/uploads/other/3/3363.pdf.

75. The Office of the Public Defender reported that school administrators and parents in Gali district had opposed this policy, to no avail. Various sources consider that shifting to Russian-language teaching has seriously reduced the quality of education in the regions of Abkhazia populated by ethnic Georgians (i.e. Gali district, and parts of Ochamchire and Tkvarcheli districts), since most children, teachers and parents lack sufficient knowledge in Russian. According to several sources, teachers and schoolchildren continue to unofficially use the Georgian language in schools but have been under increasing pressure to use Russian. Reportedly, there is a tendency for families to move their children to the territory controlled by the Government of Georgia in order to enable them to receive education in their native language.

76. Reportedly, Armenians and Russians in Abkhazia have been receiving education in their native languages, while children of Georgian ethnic origin have been facing further limitations every year on exercising the same right or are unable to do so. Such a policy would be discriminatory towards children of Georgian ethnic origin.

77. OHCHR has been informed that there have been no restrictions in Akhalgori district on education in Georgian. While Russian and Ossetian are considered as the only "official" languages in South Ossetia, Georgian is authorized in areas where the majority of people speak it. OHCHR has been informed that 6 out of 11 public schools in Akhalgori region in South Ossetia are Georgian and that the students are instructed in their native language in accordance with the programme adopted by the Ministry of Education and Science of Georgia.

10. Personal documents

78. OHCHR has not been in a position to assess the impact of various regulations, regimes and practices issued by the authorities in control regarding possession of personal documents in Abkhazia and South Ossetia, beyond aspects presented in the latest report of the Secretary-General to the General Assembly on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia (A/71/899). These include the so-called "Law on the Legal Status of Foreigners in Abkhazia", the so-called "Law on Procedures of Exit from the Republic of Abkhazia and the Entry into the Republic of Abkhazia", "No. 9" documents (temporary identification documents) and new crossing documents (*propuski*), as well as "passports" issued by the authorities in control in South Ossetia. Documents issued by the authorities in control in Abkhazia and South Ossetia have been considered null and void by the Government of Georgia.

79. Constraints and ambiguities surrounding the issue of personal documents affect the ability of ethnic Georgians primarily, including returnees, to enjoy their human rights, and further exacerbate their vulnerability. The lack of necessary documents hampers the enjoyment of a number of human rights, including property rights, and freedom of movement, and creates difficulties for the affected population to register births or regulate their civil status. Any type of documentation, even basic or temporary, needs to facilitate access to social, economic, cultural, civil and political rights.

11. Property issues

80. Under article 17 of the Universal Declaration of Human Rights, everyone has the right to own property, alone as well as in association with others, and no one is to be arbitrarily deprived of such property.

81. UNHCR has been advocating with the authorities in control in Abkhazia and South Ossetia to uphold the rights of ethnic Georgian returnees, notably in relation to documentation and freedom of movement.

82. The restitution of housing, land and property left behind by internally displaced persons or the provision of appropriate compensation in lieu of restitution remains a serious challenge that needs to be addressed. The Special Rapporteur on the human rights of

internally displaced persons has emphasized that internally displaced persons are entitled to restitution of or compensation for their property, regardless of whether they choose to return, integrate locally or resettle elsewhere.[30] He noted that the wire fences along the Administrative Boundary Line represent one of the main obstacles to the achievement of durable solutions and for access to land, property, water and livelihoods by internally displaced persons.[31]

83. According to the Government of Georgia, violations of the right to property occur systematically in Abkhazia and South Ossetia. For instance, hundreds of houses of ethnic Georgians were burned or destroyed deliberately during and after the war in August 2008. The setting up of razor wire fences in the middle of private farmlands and orchards has been accompanied by expropriations.

12. Violence against women

84. It would be important to ensure accountability and reparation for cases of sexual and gender-based violence that reportedly occurred during the 2008 conflict.[32]

85. In Abkhazia, according to the Office of the Public Defender, there have been discussions, involving civil society, on domestic violence, and a local organization has reportedly developed a legal framework on combating domestic violence. The authorities in control in Abkhazia recently agreed that the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) could operate in Abkhazia to take over a partnership with a local non-governmental organization active in the prevention of and response to various forms of sexual and gender-based violence. The Office of the Public Defender reported that the situation in South Ossetia was much graver and that no access by relevant international actors was possible.

13. Confidence-building measures

86. The Council of Europe noted[33] that confidence-building measures activities with Abkhazia included meetings between public defenders and civil society representatives from Tbilisi and Sukhumi and training sessions on international standards and practices for relevant actors; projects on architectural heritage; training sessions aimed at developing professional competence on human rights education for children. The confidence-building measures programme continued to evolve, both in terms of the diversity of thematic issues and the diversity of the participants. However, the Council of Europe underscored the lack of involvement of participants from South Ossetia, due to various factors including difficult access.

87. OHCHR encourages discussions on additional confidence-building measures, and welcomes the initiative of the Council of Europe to include human rights awareness in its programme.

88. According to some sources, the local population believes, inter alia, that confidence-building measures can de-escalate the situation around the dividing lines and bring greater peace and security by introducing dialogue across those lines, including between relatives and former neighbours, and by supporting economic exchanges and joint economic projects across the administrative boundary lines.

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[30] See A/HRC/35/27/Add.2, para. 38.

[31] Ibid., para. 26.

[32] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, vol. 2, pp. 355-358.

[33] See Council of Europe document SG/Inf(2017)18.

III. Conclusions

89. The High Commissioner welcomes the continuous cooperation between the Government of Georgia and OHCHR and the commitment of the Government to taking steps to improve the national human rights protection system. The efforts of the Government to bring national laws, policies and practices in line with international human rights standards illustrate the will to comply with its obligations and commitments.

90. Public officials, including at the highest levels, are encouraged to speak up more frequently on the importance of human rights for the development of the country. OHCHR remains committed to supporting the Government of Georgia and other national stakeholders in advancing the realization of all human rights for all in Georgia. However, concerns remain with regard to the lack of any independent and effective framework to investigate, prosecute and punish cases of torture and ill-treatment and provide remedies for victims or their families; to protect the right to privacy and freedom of the media; to combat discrimination; to guarantee the independence of the judiciary and the fairness of trials; and to improve access to economic and social rights for vulnerable people.

91. The High Commissioner regrets that the authorities in control in Abkhazia and South Ossetia have refused to grant access to OHCHR staff members and to the United Nations human rights mechanisms, despite repeated calls in that regard from the highest United Nations officials.

92. Credible and verified information about the human rights situation in Abkhazia and South Ossetia is lacking, while conflicting claims continue to fuel tensions and undermine security, human rights and development efforts. OHCHR reiterates its readiness to assist all those concerned to assess objectively and address effectively the human rights needs of people. According to available information, some practices in Abkhazia and South Ossetia appear to amount to discriminatory patterns based on ethnic grounds, especially with regard to freedom of movement, access to personal documents, the right to education and property rights.

93. More attention should be paid to the human rights consequences of the past conflicts, which continue to adversely affect the daily lives of the local population. OHCHR calls upon all duty bearers to take all appropriate measures to ensure that the rights guaranteed under international law are upheld without discrimination.

94. Continued efforts within the framework of the Geneva International Discussions — under the co-chairmanship of the European Union, the Organization for Security and Cooperation in Europe and the United Nations — as well as under the Joint Incident Prevention and Response Mechanism, are of critical importance to create the necessary conditions for the improvement of the human rights situation in Abkhazia and South Ossetia.

95. Support for people-to-people and intercommunal contacts and for the development of effective ways to tackle the issues pertaining to education, crossings, property claims, women's participation, missing persons and protection of cultural heritage needs to be developed or strengthened. Sports and cultural activities involving youth, as well as joint programmes and study visits for local professionals (e.g. journalists, lawyers and artists) and joint media engagement should be supported.

96. The full participation of women, on equal terms with men, in all aspects of conflict prevention and resolution, including in high-level meetings related to settling conflicts, should be encouraged. All duty bearers are urged to further strengthen efforts to fight against gender-based violence and stereotypical attitudes regarding the roles and responsibilities of women and men in the family and in society.

97. OHCHR welcomes the fact that the authorities in control in Abkhazia provide regular access to some United Nations development and humanitarian actors, and calls for the same treatment of the human rights pillar. OHCHR urges the authorities

in control in South Ossetia to provide regular access for actors dealing with development, human rights, humanitarian issues and peace and security.

98. **OHCHR calls upon the authorities in control in Abkhazia and South Ossetia to grant unhindered access for OHCHR and international and regional human rights mechanisms to be able to assist in the advancement of human rights protection of the affected population.**